

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/STOP PRESS: MARINE AND COASTAL ACCESS ACT 2009

## **AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))**

### **STOP PRESS:**

The Marine and Coastal Access Act 2009 makes provision in relation to marine functions and activities; makes provision about migratory and freshwater fish; makes provision for and in connection with the establishment of an English coastal walking route and of rights of access to land near the English coast; enables the making of Assembly Measures in relation to Welsh coastal routes for recreational journeys and rights of access to land near the Welsh coast; makes further provision in relation to Natural England and the Countryside Council for Wales; makes provision in relation to works which are detrimental to navigation; and amends the Harbours Act 1964. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 316-320, 322-325, Sch 5 (in part). Further provisions came into force on 12 January 2010: ss 1-3, 14-22, 24, 26-28, 31, 32-40, 42-64, 65-84 (England), 190-216, 217 (in part), 220-222, 223 (in part), 224-232, 233 (in part), 235, 237-239, 243-262, 264-313, 315, 321 (in part), Schs 1-3, 16 (in part), 17, 18, 21, 22 (in part): s 324, SI 2009/3345. Further provisions came into force on 1 April 2010: ss 9-13, 23, 25, 29, 30 and 234, Sch 8 paras 7, 8, and Sch 22 (in part) (SI 2010/298). Further provisions come into force on 1 January 2011, so far as not already in force: ss 215-233, Sch 16 and Sch 22 Pt 5 (SI 2010/298). The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

### ***Part 1 (ss 1-40) The Marine Management Organisation***

#### *Chapter 1 (ss 1-3) Establishment*

Section 1 establishes a body to be known as the Marine Management Organisation ('MMO'), and introduces Schs 1, 2, which make further provision as to the status and constitution of the MMO. The MMO is to act as the United Kingdom Government's strategic delivery body in the marine area, and s 2 sets out the MMO's general objective in relation to its marine functions, which is to ensure that activity in its marine area is managed, regulated and controlled with the objective of making a contribution to the achievement of sustainable development. The Secretary of State is to set objectives and performance indicators for the MMO which it must endeavour to meet: s 3.

#### *Chapter 2 (ss 4-13) Licensing of fishing boats*

Section 4 transfers to the MMO the function of the Secretary of State in relation to the granting of fishing licences within British fishery limits. Section 5 provides for the MMO to be subject to a duty to vary a licence following a successful appeal against certain provisions in the licence restricting the amount of time that a vessel may spend at sea. The functions of the Secretary of State in licensing vessels involved in the trans-shipment of fish are also transferred to the MMO by virtue of s 6. Section 7 makes provision supplementary to ss 4 and 6. The functions of the Secretary of State relating to the authorisation of fishing operations for scientific and other purposes are transferred to the MMO by s 8, and the functions of the Secretary of State in granting licences in England and the English inshore region for the killing or taking of seals are

transferred to the MMO by s 9. Section 10 provides that the powers under the Wildlife and Countryside Act 1981 s 16 to grant licences in certain circumstances for otherwise prohibited activities are to be exercised by the MMO, instead of the Secretary of State or Natural England, in the case of any such activities in the sea adjacent to England that lies seaward of mean low water mark out to 12 nautical miles. The 2009 Act s 11 amends the Sea Fisheries (Wildlife Conservation) Act 1992, to place the MMO under the same duty as the Secretary of State, when discharging any sea fisheries functions, to have regard to the conservation of marine flora and fauna and to try to achieve a reasonable balance between that consideration and any other considerations to which it is required to have regard. By virtue of s 12, certain of the functions of the Secretary of State in issuing consents under the Electricity Act 1989 s 36 relating to the construction, extension and use of offshore generating stations are also transferred to the MMO, and by virtue of the 2009 Act s 13, the MMO will also be able to issue notices under the Energy Act 2004 s 95 declaring safety zones around those offshore generating stations (described as renewable energy installations) for which it issues those consents.

*Chapter 3 (ss 14-22) Agreements involving the MMO for the exercise of functions*

Section 14 allows the Secretary of State to enter into agreements with the MMO authorising the MMO to perform marine functions currently performed by the Secretary of State. With the approval of the Secretary of State, s 15 enables the MMO, to make agreements with bodies listed in s 16 authorising those bodies to perform the MMO's functions on its behalf. Those functions which may not be delegated to the MMO or an eligible body are set out in s 17. By virtue of s 18, the maximum amount of time that an agreement between the Secretary of State and the MMO or an agreement between the MMO and an eligible body may last is 20 years. Section 19 provides that an agreement may still be entered into with a body which is already involved with the function in some way. Additional provision in relation to agreements with harbour authorities which are local authorities is made by s 20. Section 21 makes supplementary provision with respect to agreements, and s 22 is interpretational.

*Chapter 4 (ss 23-40) Miscellaneous, general and supplemental provisions*

Section 23 amends certain sections of the Planning Act 2008 to set out the MMO's role in relation to development consents. The MMO has powers, by virtue of the 2009 Act s 24, to undertake research on matters relevant to its functions or its general objective, either by itself or in association with others, and to commission or support others to undertake such research. The MMO's duties and powers to provide advice and assistance, and the use of training facilities, to the Secretary of State, public bodies and any other person, are specified by s 25. Section 26 enables the MMO to publish documents and provide information about anything relating to its general objective or any of its functions, and s 27 enables the MMO to make a reasonable charge for any services it provides (on a cost-recovery basis). The MMO is to be accountable to the Secretary of State, who will from time to time require, in writing, information from the MMO relating to the performance of its functions: s 28. The MMO is to have responsibilities for enforcement in the marine area, including bringing prosecutions where appropriate, and s 29 makes provision with respect to the powers of the MMO to pursue criminal proceedings and proceedings for the recovery of monetary penalties imposed under the Act. By virtue of s 30, the MMO may continue prosecutions that have already been started by the Secretary of State, including prosecutions started by the Marine and Fisheries Agency, where those prosecutions are for offences related to functions transferred to the MMO or are for offences under fisheries legislation. Section 31 allows the MMO to take action which will help it to exercise its functions and meet its general objective, such as borrowing money, holding property, and investing money. Section 32 enables the Secretary of State to make the appropriate funds available to the MMO by way of grant, and s 33 allows the MMO to borrow money as necessary to enable it to carry out its functions. By virtue of s 34, the MMO's ability to borrow is limited to £20m, although the Secretary of State may increase this (up to £80m) by order, subject to approval by the House of Commons. Section 35 enables the Secretary of State to lend money to the MMO and makes the loan subject to any appropriate repayment

conditions. The Secretary of State may guarantee loans, interest and other financial obligations of the MMO: s 36. Under s 37, the Secretary of State may, following consultation, give general or specific directions to the MMO regarding the exercise of its functions, including directions in relation to international agreements to which the United Kingdom or European Union is a party. Section 38 provides for the Secretary of State to issue guidance to the MMO regarding the exercise of its functions, and the MMO must have regard to any guidance issued. Section 39, Sch 3 enable the Secretary of State to make schemes to transfer to the MMO property, rights and liabilities of the Department for Environment, Food and Rural Affairs (including those of the Marine and Fisheries Agency), other government departments, ministers and statutory bodies, and also allows the transfer of any property, rights and liabilities from the MMO to ministers, government departments and statutory bodies. The Secretary of State may require a government department, minister or other statutory body to make staff, premises or other facilities available to the MMO on a temporary basis: s 40.

## ***Part 2 (ss 41-43) Exclusive Economic Zone, UK marine area and Welsh zone***

Section 41, Sch 4 allow for the declaration of an Exclusive Economic Zone to replace the existing zones, namely the areas within British fishery limits, the Renewable Energy Zone, the Pollution Zone, and the Gas Importation and Storage Zone, in order to simplify the management of the United Kingdom's offshore maritime areas. Section 42 defines the UK marine area for the purposes of managing the United Kingdom's maritime space; it includes those areas of the sea and seabed over which the United Kingdom enjoys sovereignty in addition to those offshore areas over which the United Kingdom is able to assert its sovereign rights. The Government of Wales Act 2006 s 158(1) is amended by the 2009 Act s 43 to insert a definition of the Welsh zone.

## ***Part 3 (ss 44-64) Marine planning***

### *Chapter 1 (ss 44-48) Marine policy statement*

Section 44 describes what is meant by a 'marine policy statement' ('MPS') and defines the MPS as a document that is prepared and adopted by the policy authorities, in accordance with the process laid down in Sch 5, and which sets out their policies for contributing to the sustainable development of the UK marine area. By virtue of s 45, the policy authorities may prepare an MPS by acting jointly; an MPS may also be adopted by the Secretary of State acting jointly with only one or two of the other policy authorities, or alone if necessary. Policy authorities must review the MPS whenever they consider it appropriate to do so: s 46. Section 47 enables an MPS to be amended, but only the policy authorities which originally prepared and adopted an MPS may amend it. If any one of the policy authorities which originally adopted an MPS comes to the conclusion that the MPS no longer reflects their policy, and that authority does not want to, or cannot, correct the problem by making an amendment to the MPS, s 48 enables the authority to withdraw from the MPS by first notifying the other policy authorities of their intention, and then placing a notice in the London, Belfast and Edinburgh Gazettes.

### *Chapter 2 (ss 49-54) Marine plans*

Section 49 identifies each of the component 'regions' within the UK marine area for the purposes of identifying who will be responsible for planning in that region, and s 50 sets out which marine plan authorities are to have responsibility for the different regions of the UK marine area. Provision is made by s 51 for the creation of marine plans, and certain basic requirements as to their content and the way in which they are to be prepared are set out. A marine plan authority may amend a marine plan, and any such amendment must be prepared and adopted in accordance with Sch 6 in exactly the same way as the original plan: s 52. If the marine plan authority comes to the conclusion that there is a problem with the plan which it does not want to, or cannot, rectify by making an amendment, a marine plan may be

withdrawn: s 53. Section 54 requires the marine plan authorities to keep under review matters which may affect their functions of identifying marine plan areas, and preparing plans for them.

#### *Chapter 3 (ss 55-57) Delegation of functions relating to marine plans*

Section 55 enables a marine plan authority to direct another public body to carry out some of its marine planning functions, by giving it a direction, and s 56 contains a number of additional rules about directions issued under s 55. Where a marine plan authority has delegated some of its planning functions by directions under s 55, s 57 enables the marine plan authority to give further directions to a public body to which it has delegated functions, setting out how those functions should be performed.

#### *Chapter 4 (ss 58-61) Implementation and effect*

Section 58 makes provision about the effect which 'the appropriate marine policy documents' are to have on the taking of certain decisions by public authorities; the documents that may be appropriate marine policy documents are the MPS and any marine plans. The rules for determining whether the MPS or any particular marine plan is an appropriate marine policy document in any article case are set out in s 59 (as read with s 60). By virtue of s 61, each marine plan authority must monitor and report on the effects and effectiveness of its existing plans, and report every six years until 2030 on the way it has used, and intends to use, its marine planning powers.

#### *Chapter 5 (ss 62-64) Miscellaneous and general provisions*

Section 62 sets out how people may challenge the content of marine policy documents, or amendments to them, in court, and s 63 sets out the powers of a court hearing a challenge to the validity of a marine policy document. Section 64 deals with interpretation.

### ***Part 4 (ss 65-115) Marine licensing***

#### *Chapter 1 (ss 65-73) Marine licences*

By virtue of s 65, anyone undertaking an activity mentioned in s 66 will need to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act. The licensing authority, by virtue of ss 67, 68, may specify in what form an application for a marine licence should be submitted and may charge an application fee. When determining an application for a marine licence the licensing authority must have regard to the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant (s 69), and the appropriate licensing authority may cause an inquiry to be held in connection with the determination of an application for a marine licence (s 70). The licensing authority may, by virtue of s 71, impose conditions on any licence it grants. Under s 72, the licensing authority may vary, suspend or revoke a licence in certain cases by notice. Each appropriate licensing authority is under an obligation to establish a mechanism through which an applicant for a marine licence may appeal against its decision to refuse to grant a licence or against any of the conditions attached to one: s 73.

#### *Chapter 2 (ss 74-84) Exemptions and special cases*

By virtue of s 74, the licensing authority may, by order, either exempt activities from the need for a licence completely, or specify conditions which, if met, will mean the activity may be exempted from the need for a licence. Section 75 provides exemptions for certain dredging activities. Marine licensing as described in Pt 4 does not apply to any dredging done, in the exercise of specified functions, in the Scottish zone for the purpose of extracting minerals: s 76. Section 77 exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998 or the Energy Act 2008. Where a marine licence is required and an application for a harbour order has been, or is likely to be, made, the 2009 Act s 78 provides

that in such cases the authority granting, or likely to grant, the harbour order, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a harbour order and the application will be subject to the same administrative procedure. Where both a marine licence and consent under the Electricity Act 1989 s 36 (in relation to offshore generating stations) are required, the 2009 Act s 79 provides that the authority to determine consent under the 1989 Act s 36, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a s 36 consent and the application for a marine licence will be subject to the same administrative procedure. The 2009 Act s 80 removes the obligation for an operator to apply to the Secretary of State for a licence under the Electronic Communications Code as set out in the Telecommunications Act 1984 Sch 2. In the case of certain submarine cables, the 2009 Act s 81 restricts the application of the marine licensing regime as respects their laying or maintenance. In cases where an activity requires a licence under the Act, and would otherwise also require consent under the Water Resources Act 1991 s 109, the Environment Agency may remove the need for separate consent under the 1991 Act by issuing a notice to that effect to the applicant: 2009 Act s 82. In cases where an activity requires a licence under the 2009 Act, and would otherwise also require consent from the Admiralty under any local legislation, the Secretary of State may remove the need for that separate consent by issuing a notice to that effect: s 83. In cases where an activity requires a licence under the 2009 Act, and would otherwise also require consent from the Environment Agency under any of its byelaws under the 1991 Act Sch 25, the Environment Agency may remove the need for that separate consent by issuing a notice to that effect: 2009 Act s 84.

### *Chapter 3 (ss 85-97) Enforcement*

By virtue of s 85, it is an offence for a person to carry out a licensable activity without a licence or to do so in a manner that breaches any conditions of a licence. However, if a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving life, s 86 provides a defence against a charge under s 85 provided certain conditions are fulfilled. Section 87 provides a defence against such a charge where the activity is for the purpose of carrying out emergency works to electronic communications. A further defence to the undertaking of certain activities without a licence is provided by s 88. It is an offence for a person who is applying for a new licence, or for the variation or transfer of an existing licence or who, in complying, or purporting to comply, with obligations imposed either by Pt 4 or a licence, knowingly or recklessly supplies false or misleading information, or intentionally fails to disclose any material particular: s 89. Under s 90, a person carrying on a licensed activity in a manner that breaches the conditions of the licence may be issued with a notice requiring compliance. A person who has carried on or is in the process of carrying on a licensable activity, either without a licence or with a licence but in a manner that breaches the conditions of the licence and who has caused, is causing or is likely to cause any of the results described, may be issued with a remediation notice: s 91. Section 92 provides that all compliance and remediation notices must be in writing, must be served on the person carrying on or in control of the activity in question, and may, if a licence has been granted for that activity to another person, also be served on the licensee. Section 93 enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under Pt 4. Certain minimum requirements, that the licensing authority must ensure that any fixed monetary penalty regime includes, are specified in s 94. By virtue of s 95, the licensing authority may by order grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under Pt 4. Section 96 specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime includes. Further provision in relation to the civil sanctions that may be imposed under Pt 4 is made by s 97, Sch 7.

### *Chapter 4 (ss 98-100) Delegation*

Section 98 provides that the licensing authority may by order delegate any of its delegable marine licensing functions (as defined) to such other body as the licensing authority considers appropriate, and s 99 enables further provision to be made in an order concerning the exercise of any delegated functions. Where a licensing authority has delegated any of its licensing or enforcement functions under s 98, s 100 enables the licensing authority to give further directions to a person to whom it has delegated functions, setting out how those functions should be performed.

#### *Chapter 5 (ss 101-115) Supplementary*

By virtue of s 101, each licensing authority must maintain a register of information relating to applications and licences for which it is responsible and must make the register available to the public. An enforcement authority may issue a stop notice to a person prohibiting the person from carrying on a licensable marine activity if that activity is causing or is likely to cause serious harm to the environment or to human health or is causing or is likely to cause serious interference with legitimate uses of the sea: s 102. Stop notices must be in writing, must be served on the person carrying on or in control of the activity and, if a licence has been granted for that activity to another person, may also be served on the licensee: s 103. Sections 104, 105 make provision for emergency safety notices to be issued to a person if it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, as a result of licensable works; the notice may require the provision of lights, signals or other aids to navigation or the stationing of guard ships until the serious interference, or threat of interference, is removed. Where it appears that a licensable marine activity has been carried on without a licence or in breach of the conditions of a licence, the appropriate licensing authority may carry out any works that appear to be necessary or expedient for the purpose of protecting the environment or human health, preventing interference with legitimate uses of the sea, preventing or minimising, or remedying or mitigating the effects of, any harm to the environment or any interference with legitimate uses of the sea, or restoring the condition of any place affected by any such harm or interference: s 106. At any person's request, the licensing authority may, by virtue of s 107, perform tests on substances for their effect on the marine environment, and the authority may charge for that testing. Provision as to appeals against notices under Pt 4 is made by s 108. In any proceedings for an offence under Pt 4, it is a defence under s 109 to prove that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. Proceedings for an offence under Pt 4 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom even if it was in fact committed at sea: s 110. Section 111 deals with application to the Crown, and ss 112, 113, Schs 8, 9 make amendments and transitional provisions. Section 113 contains the rules for determining who is the appropriate licensing authority for any area, and ss 114, 115 provide definitions of terms used in Pt 4.

### ***Part 5 (ss 116-148) Nature conservation***

#### *Chapter 1 (ss 116-147) Marine conservation zones*

Section 116 provides a power for the Welsh Ministers, Scottish Ministers and the Secretary of State to designate, as the appropriate authority, areas as marine conservation zones ('MCZs') by means of local orders. Section 117 sets out the circumstances in which ministers may designate an MCZ. Further provision as to orders designating MCZs is made by s 118, including the requirement to specify the boundaries of the designated area. By virtue of s 119, ministers must carry out public consultation before designating an MCZ, and s 120 makes provision for ministers to publish notice of the making of an order. Section 121 allows ministers to hold hearings before deciding whether to make an order under s 116 to designate an MCZ, and s 122 allows an order designating an MCZ to be amended or revoked by a further order. By virtue of s 123, the appropriate authority is under a duty to designate MCZs so as to contribute to the

creation of a network of marine sites. The Secretary of State, the Welsh Ministers and the Scottish Ministers must report to Parliament, the Welsh Assembly and the Scottish Parliament, as appropriate, on progress in designating a network of MCZs: s 124. Section 125 places a general duty on public authorities to carry out their functions in the manner that they consider best furthers, or least hinders, the conservation objectives set for MCZs, and s 126 requires a public authority to inform the relevant statutory nature conservation body if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ. Powers and duties are conferred by s 127 on the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) to give advice or guidance to public authorities in respect of MCZs. The relevant statutory nature conservation body is able, by virtue of s 128, to obtain an explanation if it thinks a public authority has failed to exercise its functions to further, or where permissible, least hinder, the conservation objectives of an MCZ, failed to notify the appropriate conservation body where it believes that an act requiring authorisation may have a significant risk of hindering the achievement of the conservation objectives of an MCZ, or failed to act in accordance with the guidance provided by the statutory nature conservation body. Section 129 gives the MMO the power to make byelaws to protect MCZs in the English inshore region and help further their conservation objectives; there is no power to make byelaws in the offshore region. The MMO must carry out public consultation before making a byelaw (s 130), and provision is made for emergency byelaws (s 131) and interim byelaws (s 132). Section 133 sets out the administrative and notification requirements in relation to byelaws, whether they are made urgently or not, and interim byelaws. Section 134 gives the Welsh Ministers the power to make conservation orders, in order to protect MCZs in the Welsh inshore region and help further their conservation objectives, and s 135 requires the Welsh Ministers to consult before making a conservation order, and to publish notice of the making of the order and to ensure that interested individuals are aware of the publication. By virtue of s 136, the Welsh Ministers may make interim orders to protect features where there may be reasons to designate an MCZ and where there is an urgent need to protect the feature. Administrative and notification requirements in relation to Welsh conservation orders, whether made urgently or not, and interim orders, are set out in s 137. Section 138 makes provision for the Secretary of State to hold a hearing before deciding whether to confirm a byelaw or revoke an emergency or interim byelaw, and also makes provision for the Welsh Ministers to hold hearings before deciding whether to make a conservation order or an interim order. Breaching any byelaw or conservation order is an offence: s 139. Section 140 creates a general offence where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. Section 141 sets out the circumstances in which a person will not be guilty of an offence under s 139 or 140. By virtue of s 142, the Secretary of State or the Welsh Ministers may make an order which confers a power on an enforcement authority to issue fixed monetary penalties for the breach of byelaws or conservation orders. Certain minimum requirements that must be included in any fixed monetary penalty regime are set out in s 143. Section 144 gives effect to the further provisions about fixed monetary penalties set out in Sch 10. Section 145 deals with application to the Crown and s 146, Schs 11, 12 make consequential and transitional provision. Section 147 is interpretational.

#### *Chapter 2 (s 148) Other conservation sites*

Section 148 introduces Sch 13 which amends the Wildlife and Countryside Act 1981.

### ***Part 6 (ss 149-193) Management of inshore fisheries***

#### *Chapter 1 (ss 149-186) Inshore fisheries and conservation authorities*

Section 149 provides for the Secretary of State to establish inshore fisheries and conservation districts ('IFC districts') which are to be established by order and are to consist of one or more local authority areas that have a seashore. By virtue of s 150, there must be an inshore

fisheries and conservation authority ('IFC authority') for every IFC district; the IFC authority is a committee, or a joint committee (in the case of more than one local authority), of the local authority or authorities falling within the district. An order establishing an IFC district must provide for the membership of the IFC authority for that district (s 151), and the Secretary of State may amend or revoke an order that established an IFC district (s 152). Each IFC authority is placed under a duty, by s 153, to manage the exploitation of sea fisheries resources in its district. Each IFC authority must exercise its powers to seek to ensure that the conservation objectives of any MCZ in its district are furthered: s 154. Section 155 provides a power for an IFC authority to make byelaws which must be observed in its district, and s 156 sets out a non-exhaustive list of the types of activities for which IFC authorities may make byelaws, including emergency byelaws, to manage sea fisheries resources in their district. By virtue of s 157, an IFC authority may make an emergency byelaw which takes effect without first being confirmed by the Secretary of State. Supplementary provision concerning byelaws is made by s 158, and s 159 allows the Secretary of State to revoke or restrict the application of any byelaw made by an IFC authority where it appears to the Secretary of State that the byelaw is unnecessary, inadequate or disproportionate. Section 160 allows the Secretary of State to make regulations about the procedure to be followed by an IFC authority when making byelaws, including emergency byelaws. Provision as to inquiries is made by s 161, and s 162 provides that the production of a signed copy of a byelaw is conclusive evidence of the byelaw. A person is guilty of an offence if he contravenes any byelaw made by an IFC authority. Where a vessel is used in contravention of a byelaw the master, owner and charterer, if any, will each be guilty of an offence, and liable on summary conviction to a maximum fine of £50,000: s 163. Where a person is convicted of an offence, the court may order forfeiture of any fishing gear used in the commission of the offence or any fish in respect of which an offence was committed: s 164. Section 165 provides that inshore fisheries and conservation officers ('IFC officers') may be appointed by IFC authorities. The enforcement powers which are available to an IFC officer and the legislation in respect of which they may be exercised are set out in s 166. Section 167 gives an IFC authority the power, with the approval of the Secretary of State, to make an agreement with an 'eligible body' (defined by s 168), authorising the body to perform any of the IFC authority's functions on its behalf. Provision for the review, variation and cancellation of agreements made between IFC authorities and eligible bodies is made by s 169. Section 170 makes provision for cases where a body that is authorised to carry out a function under an agreement is already involved with the function in some way. By virtue of s 171, agreements, and approvals for them, must be in writing and agreements must be published in such a way as to bring them to the attention of persons likely to be affected. Provision is made by s 172 for an IFC authority to take such measures as it considers necessary in order to develop any fishery for sea fisheries resources in its district. Section 173 provides for IFC authorities to enter into arrangements, with or without charge, with another person or body for the provision of services by the IFC authority to that person or body. Section 174 requires an IFC authority to take such steps as it considers appropriate to co-operate with certain other public organisations that have functions relating to the regulation and enforcement of activities in any part of the sea within the IFC district and to co-operate with other IFC authorities that share a boundary with the IFC authority. Under s 175, IFC authorities must collect certain information and provide certain information to the Secretary of State, and under s 176, IFC authorities must keep proper accounts and proper records in relation to those accounts. Every IFC authority must make and publish a plan setting out the authority's main objectives and priorities for the year (s 177), and, as soon as is reasonably practicable after the end of each financial year, must publish a report on its activities in that year (s 178). The miscellaneous powers of an IFC authority are set out in s 179 and include matters necessary for the exercise of any of its other functions and the acquisition or disposal of land or other property. Section 180 establishes the funding arrangements for IFC authorities, and s 181 provides that an IFC authority may bring proceedings under the 2009 Act in its own name as well as bringing or defending any other proceedings in its own name. By virtue of s 182, no member or employee of an IFC authority acting in good faith is liable for anything done in connection with the discharge of the authority's functions. The Secretary of State is required, by s 183, to lay a report before



Parliament on the conduct and operation of IFC authorities. Section 184, Sch 14 make minor and consequential amendments, s 185 deals with application to the Crown, and s 186 is interpretational.

*Chapter 2 (ss 187, 188) Local fisheries committees*

Section 187 repeals the Sea Fisheries Regulation Act 1966, and the 2009 Act s 188 provides for the appropriate national authority to make any provision necessary as a consequence of the repeal of the 1966 Act, including any transitional, consequential, incidental or supplemental provision or savings.

*Chapter 3 (ss 189-193) Inshore fisheries in Wales*

Section 189 confers power on the Welsh Ministers to make any provision by order which the IFC authorities may make by byelaw, but only to the extent that the Welsh Ministers do not already have the power to make such provision, and s 190 provides that it is an offence for a person or vessel to contravene any provision of an order made under s 189. Section 191 confers various powers on the court following conviction of a person for an offence under s 190. By virtue of s 192, the Welsh Ministers may enter into arrangements, with or without charge, with third parties (private fishery owners and grantees of several and regulating orders) for marine enforcement officers to undertake enforcement activities within those third party fisheries. Miscellaneous amendments to the Coast Protection Act 1949 and the Wildlife and Countryside Act 1981 are made by s 193.

**Part 7 (ss 194-234) Fisheries**

*Chapter 1 (ss 194-201) The Sea Fish (Conservation) Act 1967*

The 2009 Act s 194 amends the Sea Fish (Conservation) Act 1967 s 1 to provide for all the current powers available under orders made under that provision to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. Section 3 is amended by the 2009 Act s 195 so that fishing restrictions apply equally to persons fishing from the shore of England and Wales as to persons fishing from a boat, and to create new offences for any person fishing from the shore in contravention of any such restrictions and to allow for orders to exempt persons from the restrictions imposed. Section 196 amends the 1967 Act s 4 to enable ministers to specify the amount of the charge for commercial sea fishing vessel licences, to make provision as to how the charge should be determined or to provide that in specified circumstances no charge will be payable. Section 4 is further amended by the 2009 Act s 197 to allow the imposition of conditions in fishing licences for marine environmental purposes. By virtue of amendments made by s 198 to the 1967 Act, orders made under s 5 may now be made in relation to persons fishing from the shore. The 2009 Act s 199 amends the 1967 Act in relation to the penalties for offences. Section 12 is replaced by the 2009 Act s 200 and now provides that where offences under the 1967 Act ss 1-6 have been committed by a body corporate, then any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. The 2009 Act s 201, Sch 15 makes further minor and consequential amendments to the 1967 Act.

*Chapter 2 (ss 202-214) The Sea Fisheries (Shellfish) Act 1967*

The 2009 Act s 202 amends the Sea Fisheries (Shellfish) Act 1967 s 1 to allow for orders to be made in relation to all types of shellfish including those not already listed, without the present requirement for regulations to be made each time the Secretary of State or the Welsh Ministers wishes to add a new type of shellfish to the list. Section 1 is further amended by the 2009 Act s 203 to enable several and regulating orders to be varied or revoked in order for development of the sea shore affected by such orders to be carried out. The 1967 Act s 3 is amended by the 2009 Act s 204 to set out the powers of grantees of regulating orders who have the right to

regulate the fishery, and establish that grantees may spend monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery as currently provided. Section 205 amends the 1967 Act ss 3 and 7 so that the maximum fine that may be imposed by a court is increased to £50,000 in line with that for other fisheries legislation. Section 3 is amended by the 2009 Act s 206 to provide that, where a fishing boat is used in the commission of an offence, the master, owner and charterer, if any, of the boat are each guilty of an offence. The 1967 Act s 3 is also amended by the 2009 Act s 207 to ensure that where a regulating order enables a grantee to impose restrictions or make regulations about the dredging, fishing for and taking of shellfish, the grantee is able to carry into effect and enforce those restrictions and regulations in the same way as may be done for regulations imposed by and restrictions made in the order itself. Amendments made by s 208 to the 1967 Act s 4 allow for the removal of licences from a holder after a single conviction for a breach of licence or of the provisions of the regulating order. The 2009 Act s 209 adds new provision to the 1967 Act to require grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Section 7 is amended by the 2009 Act s 210 to extend the protection afforded to private oyster beds under that provision to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate. Section 211 amends the 1967 Act in relation to the use of implements of fishing, and amendments made by the 2006 Act s 212 provide exemptions from the offence of taking certain edible crabs and lobsters where a person has authorisation to take such shellfish for scientific purposes. Amendments made by s 213 allow the Secretary of State or the Welsh Ministers to make an order to introduce protection for lobsters under the 1967 Act s 17 independently of any other devolved administration, and amendments made by the 2009 Act s 214 remove the requirement to appoint an inspector and provide the Secretary of State or the Welsh Ministers with a discretionary power in making decisions on the appointment of an inspector and calling public inquiries.

### *Chapter 3 (ss 215-233) Migratory and freshwater fish*

Section 215 amends the Salmon and Freshwater Fisheries Act 1975 s 1 to add to the list of instruments the use of which is prohibited for taking fish. The 2009 Act s 216 amends the 1975 Act s 2 to extend the prohibition on the use of roe for the purpose of fishing to lampreys, smelt, shad, and to any other specified fish. Section 25 is amended by the 2009 Act s 217 so as to extend the list of kinds of fish to which the licensing system applies to include lampreys, smelt and any fish specified in an order. Amendments made by s 218 to the 1975 Act s 26 allow orders under that provision to be made in respect of any kind of licence issued under s 25. The 2009 Act s 219 adds new provisions to the 1975 Act so as to (1) give the Environment Agency power to authorise a person to use any means (other than a licensable means of fishing) to fish for salmon, trout, eels, lampreys, smelt and freshwater fish, and other specified fish; and (2) make it an offence to fish for or take fish using any means of fishing, other than an instrument for which a licence is required, without an authorisation. Amendments relating to enforcement under the 1975 Act are made by the 2009 Act s 220. New provision added by s 221 to the 1975 Act empowers the appropriate national authority to specify additional species of fish to which ss 1, 2, 25, and 27A and the Salmon Act 1986 s 32 apply, and the 2009 Act s 222 adds new provision to the 1975 Act setting out the procedure for making such an order. The 2009 Act s 223 amends the 1975 Act to give amended definitions for eels and freshwater fish and new definitions for freshwater crayfish and smelt. The Water Resources Act 1991 is amended by the 2009 Act s 224 in relation to the Environment Agency's powers to make fisheries byelaws. The 1991 Act is further amended by the 2009 Act ss 225-227 in relation to emergency procedures for making byelaws, enforcement of byelaws, and compensation for byelaws. Section 228 raises the penalty for committing the offence of taking or destroying fish under the Theft Act 1968 to £5,000. The 2009 Act s 229 extends the offence, under the Salmon Act 1986 s 32, of handling salmon or sea trout in suspicious circumstances to eels, lampreys, smelt, freshwater fish, and other specified fish. The Environment Act 1995 s 6 is amended by the 2009 Act s 230 to extend the duty of the Environment Agency to maintain, improve and develop salmon

fisheries, trout fisheries, freshwater fisheries and eel fisheries to include lampreys and smelt fisheries, and fisheries of other specified fish. The Scotland Act 1998 s 111, which relates to Tweed and Esk fisheries, is amended by the 2009 Act s 231. Section 232 allows the appropriate national authority to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation. Consequential amendments are made by s 233.

#### *Chapter 4 (s 234) Obsolete fisheries enactments*

Section 234 repeals six redundant Acts of Parliament relating to sea fisheries and part of another such Act.

### **Part 8 (ss 235-295) Enforcement**

#### *Chapter 1 (ss 235-244) Enforcement officers*

Section 235 allows the MMO and the Welsh Ministers to appoint marine enforcement officers ('MEOs'), and s 236 sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing the marine licensing regime set out in Pt 4. The areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing legislation relating to nature conservation are set out in s 237, and s 238 sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing sea fisheries legislation. By virtue of s 239, MEOs are automatically made British seafishery officers ('BSFOs') on appointment but where MEOs are able to exercise common enforcement powers under the Act, they cannot use their BSFO powers. Under s 240, the Secretary of State will be able to appoint persons to enforce Pt 4, to the extent that it relates to the licensing of activities relating to various reserved matters. Section 241 allows the Department of the Environment in Northern Ireland to appoint persons for the purpose of enforcing Pt 4, and s 242 enables Scottish Ministers to appoint persons for the purposes of enforcing licensing under Pt 4 in the Scottish offshore region. Section 243 enables Scottish Ministers to appoint officers with the common powers for the purpose of enforcing s 140, which creates the offence of damaging etc protected features of MCZs, in the Scottish offshore region. Section 244 is interpretational.

#### *Chapter 2 (ss 245-262) Common enforcement powers*

Section 245 introduces the purpose of Pt 8 Ch 2, which is to set out the powers available to MEOs and other enforcement officers, and defines key terms. The powers in s 246 enable enforcement officers to board and inspect any vessels and marine installations, subject to the need for a warrant pursuant to s 249 if the vessel or installation is a dwelling, to carry out their functions. The powers in s 247 enable enforcement officers to enter and inspect any premises, subject to the need for a warrant pursuant to s 249, to carry out any relevant functions. Section 248 enables enforcement officers to enter and inspect any vehicle at any time, subject to the need for a warrant pursuant to s 249 if the vehicle is a dwelling; an officer may also require the vehicle to be taken to an appropriate place to be inspected, and may require assistance as necessary from people in the vehicle or the registered keeper. By virtue of s 249, an enforcement officer may not enter a dwelling unless a justice has issued a warrant authorising entry; Sch 17 sets out further provisions relating to warrants. The powers in s 250 allow an enforcement officer, when exercising a power of inspection, to search those premises and examine anything in it, and further allow the officer to stop someone and detain them to perform a search of anything in their possession or control. Section 251 gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records that they have. An enforcement officer may seize and detain or remove anything found on premises or, where a person has been undertaking an activity in respect of which the officer has enforcement powers, any item in the person's possession or

control: s 252. Further provision about seizure is made by s 253. Section 254 allows items seized during an investigation to be kept for as long as is necessary for the investigation and any trial proceedings, unless a photograph or copy would provide sufficient evidence. Under s 255, enforcement officers have powers to use any device to take visual images of anything connected with the relevant premises for evidence in the investigation of a suspected offence. If the officer believes someone has committed an offence, that person may be required to give the officer their name and address: s 256. Section 257 provides that if the officer believes someone has been undertaking an activity which needs a licence, permit, etc, the officer may require that person to show that licence. Where an officer has boarded a vessel or marine structure or entered any premises he may require the attendance of those persons listed: s 258. Section 259 gives enforcement officers the power to direct a vessel or marine installation to the port they consider to be the nearest convenient port and detain it there where an officer believes that an offence has been committed and it would not be practical to carry out their duties without first taking the vessel or marine installation to port and detaining it there, or where the officer believes that the vessel itself is evidence of the commission of an offence and the only way to preserve the evidence is to take it into port. By virtue of s 260, enforcement officers may take other people and anything necessary, including equipment and materials, to assist them in their duties, and by virtue of s 261, enforcement officers and their assistants may use reasonable force wherever necessary to carry out their functions. Section 262 is interpretational.

#### *Chapter 3 (s 263) Licensing enforcement powers*

Section 263 enables enforcement officers to require a person to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure; people may also be required to declare information about substances or objects lost or missing from a vehicle, vessel, aircraft or marine structure.

#### *Chapter 4 (ss 264-287) Fisheries enforcement powers*

Section 264 provides enforcement officers with powers to inspect any object found in the sea which it is believed has been or is being used for or in connection with fishing, and, if necessary, to lift the object out of the sea for inspection. The reporting requirements that an enforcement officer must follow after inspecting objects under s 264, are set out in s 265. Provision is made by s 266 for the retention by the relevant authority of any objects seized under s 264. Section 267 sets out arrangements for the disposal of objects seized under s 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection. Under ss 268, 269, an enforcement officer may seize fish or fishing gear for the purpose of forfeiture. Section 270 creates an obligation on the enforcement officer who seizes any fish or fishing gear under s 268 or 269 to serve a written notice on every person who appears to the officer to be the owner or one of the owners at the time the fish or gear were seized, and sets out other persons on whom the notice must be served, depending on the location from which the property was seized. The relevant authority is provided with the power, by virtue of s 271, to retain any fish or fishing gear seized under s 268 or 269. Section 272 allows the owner of any property, or the owner or charterer of the vessel if the property was seized from there, seized under s 268 or 269 and being retained under s 271, to lodge a bond with the relevant authority in return for its release. By virtue of s 273, the relevant authority has the power to sell any fish it has retained under s 271. Where the relevant authority no longer wishes to retain fish or fishing gear seized under s 268 or 269, or where it is required to make such property available for collection under s 271, s 274 requires a notice of collection to be served on every person who appears to be the owner, or owners, of the property. Section 275 provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. A forfeiture power in respect of fish that fail to meet size requirements which corresponds to the forfeiture power in respect of fishing gear in s 275, is provided by s 276. Section 277, Sch 18 make detailed provision in respect of the forfeiture under s 275 or 276 of gear or fish which fail to meet size

requirements. Where, after a successful prosecution under fisheries legislation, the court orders the forfeiture of the fish or gear in respect of which the offence was committed, s 278 provides that the relevant authority will be ordered to take possession of the property and may dispose of it as it sees fit; the proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property. By virtue of s 279, an enforcement officer may detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. Provision is made by s 280 for the release of a vessel which is being detained under s 279. Where a vessel has been detained under s 279, s 281 provides a power for the court to order the release of the vessel if it is satisfied that the continued detention of the vessel is no longer necessary. Section 282 gives the relevant authority power to enter into an agreement with the owner or charterer of the vessel, or any of the owners or charterers of the vessel, to release a vessel detained under s 279 when a monetary security has been paid. Where a bond has been paid pursuant to s 282, and the notice of detention withdrawn, the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel: s 283. An enforcement officer may request anybody on board a fishing boat to produce any automatic recording or transmitting equipment: s 284. Section 285 specifies the means by which notices required to be served under Pt 8 Ch 4 must be served, and s 286 establishes a means of determining when proceedings have been concluded. Section 287 deals with interpretation.

#### *Chapter 5 (ss 288-292) Common enforcement provisions*

Section 288 defines enforcement officer as someone who has powers under Pt 8, save those who have powers by virtue of being an assistant to an officer, and s 289 obliges enforcement officers who are exercising the common enforcement powers to show evidence that they have the authority to carry out their enforcement functions, when asked to do so. In conjunction with s 289, enforcement officers are also obliged to state their name, the power they are intending to use and reason for its use whenever they are requested to do so, although the officer may defer complying with the request if the immediate situation requires it: s 290. Unless an enforcement officer acts in bad faith or if there were no reasonable grounds for the officer to act in such manner, s 291 provides that enforcement officers and their assistants will be protected from liability in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions. Section 292 provides for a number of offences that may be committed in relation to enforcement officers or people assisting them.

#### *Chapter 6 (ss 293-295) Miscellaneous and supplementary*

Section 293 amends the Fisheries Act 1981 s 30 so that it applies both to enforceable Community restrictions and enforceable Community obligations. The 2009 Act s 293 introduces powers for the Secretary of State (in relation to England or vessels outside the Welsh zone) or the Welsh Ministers (in relation to Wales or vessels within the Welsh Zone) to apply Fixed Administrative Penalties to domestic fisheries offences, namely offences which do not originate in Community law. Section 295 deals with application to the Crown.

### ***Part 9 (ss 296-310) Coastal access***

Section 296 imposes a duty, described as the 'coastal access duty', on the Secretary of State and Natural England by reference to two objectives. The first objective is that there is a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry. The second objective, is that there is a margin of land along the length of the coast which the public may enjoy. Section 297 sets out the requirements imposed on Natural England and the Secretary of State as regards considerations that they have to take into account in discharging the coastal access duty. Under ss 298, 299, Natural England must draw up a scheme setting out the approach it will

take when discharging its coastal access duty, and must review the coastal access scheme from time to time. Section 300 defines the English coast for these purposes by reference to its adjacency to the sea. Where the coast is interrupted by a river, s 301 provides that Natural England may treat the relevant upstream waters of any river as if they were the sea. New provisions, which all refer to the coastal access duty and reports prepared pursuant to that duty, are added to the National Parks and Access to the Countryside Act 1949 by the 2009 Act s 302, Sch 19. Section 303 makes provision with regard to access to the coastal margin. Section 304, Sch 20 make further provision about the establishment and maintenance of the English coastal route. Section 305 makes clear that Natural England does not have unlimited responsibility for the safety of people who choose to use the route or associated access land. Provision is made by s 306 for the exclusion of occupiers' liability. Section 307 relates to the application of the Act to the Isles of Scilly, and s 309 deals with application to the Crown. Interpretation of Pt 9 is dealt with by s 309. Section 310 amends the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales.

### ***Part 10 (ss 311-315) Miscellaneous***

Section 311 amends the Natural Environment and Rural Communities Act 2006 s 1 in order to clarify the area over which Natural England may exercise its functions. The Civil Contingencies Act 2004 is amended by the 2009 Act s 312 in order to remove Natural England from the lists of category 1 responders. Section 313 amends the Environmental Protection Act 1990 in order to clarify the area over which the Countryside Council for Wales may exercise its functions. The 2009 Act s 314 inserts a new navigational consenting regime into the Energy Act 2008 and provides a variety of powers for the enforcement of that regime. A number of miscellaneous amendments of the Harbours Act 1964 are set out in the 2009 Act s 315, Sch 21.

### ***Part 11 (ss 316-325) Supplementary provisions***

Section 316 contains general provisions for making regulations and orders, and s 317 contains details for making directions. Section 318 provides for individual liability in some cases where there is also corporate liability. By virtue of s 319, the Territorial Waters Jurisdiction Act 1878 s 3, which provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State, is disapplied in relation to proceedings for offences committed under the 2009 Act. Section 320 allows the Secretary of State to make, by order, transitional provisions and savings. Section 321 gives effect to Sch 22, which makes various repeals. Section 322 deals with interpretation, s 323 deals with extent, and s 324 makes provision concerning commencement. Section 325 specifies the short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

The following Acts are repealed in full: White Herring Fisheries Act 1771; Seal Fishery Act 1875; North Sea Fisheries Act 1893; Behring Sea Award Act 1894; Seal Fisheries (North Pacific) Act 1895; Seal Fisheries (North Pacific) Act 1912; Sea Fisheries Regulation Act 1966.

Specific provisions of a number of Acts are repealed. These include: Fisheries Act 1891 s 13; Sea Fish (Conservation) Act 1967 ss 13, 17; Port of London Act 1968 ss 86, 87, 163; Salmon and Freshwater Fisheries Act 1975 ss 3, 6-8, 16, 17, 19-24, Sch 1; Fisheries Act 1981 s 28; Wildlife

and Countryside Act 1981 ss 36, 37; Salmon Act 1986 s 37; Merchant Shipping Act 1988 s 36; Environment Act 1995 s 102; Planning Act 2008 ss 148, 149.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/1. AGRICULTURE (SEE NOW AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION); AGRICULTURAL PRODUCTION AND MARKETING (VOLUME 1 (2008) 5TH EDITION)

## **1. AGRICULTURE (SEE NOW AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION); AGRICULTURAL PRODUCTION AND MARKETING (VOLUME 1 (2008) 5TH EDITION)**

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(i) Fisheries in General/A. OWNERSHIP OF FISHERIES/789. Corporeal and incorporeal fisheries.

## **2. FISHERIES**

### **(1) PUBLIC AND PRIVATE FISHERIES**

#### **(i) Fisheries in General**

#### **A. OWNERSHIP OF FISHERIES**

#### **789. Corporeal and incorporeal fisheries.**

The basic principle is that fisheries are in their nature mere profits of the soil over which the water flows, and that the title to a fishery arises from the right to the soil<sup>1</sup>. A fishery may be severed from the soil and it then becomes a profit à prendre in alieno solo and an incorporeal hereditament<sup>1</sup>. The term 'corporeal fishery'<sup>2</sup> is used, accordingly, to describe a corporeal hereditament<sup>3</sup> (that is, in tidal waters, a several fishery<sup>4</sup> coupled with the soil under it, and, in non-tidal waters, the soil coupled with a right of fishing over it<sup>5</sup>). A corporeal fishery may be owned by one who owns no land adjacent to it<sup>6</sup>. The term 'incorporeal fishery' is used to describe an incorporeal hereditament (that is, a mere right to take fish or a specified class of fish in a defined stretch of water without interference with the soil<sup>7</sup>). Such a right may be leasehold, freehold or appurtenant to, or a parcel of, a manor<sup>8</sup>. An incorporeal fishery cannot be exercised by means of engines fixed in the soil unless there is a special provision in the grant, for the mere grant of such a fishery does not confer the right to occupy the soil, but the temporary driving in of stakes for holding a net in position may be regarded as ancillary to the grant<sup>9</sup>.

<sup>1</sup> *A-G for British Colombia v A-G for Canada* [1914] AC 153 at 167, PC; *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732 (affd (1865) 6 B & S 570, Ex Ch) (the existence of the profit in the soil applies equally to the bed of a lake as to the soil lying under rivers and other watercourses); *Lord Chesterfield v Harris* [1908] 2 Ch 397 at 413, CA, per Buckley LJ (affd sub nom *Harris v Earl of Chesterfield* [1911] A C 623, HL); *Little v Wingfield* (1858) 8 ICLR 279; *Anon* (1495) YB 10 Hen 7, fo 24B, pl 1; 26B, pl 5; *Hanbury v Jenkins* [1901] 2 Ch 401; *Malcolmson v O'Dea* (1863) 10 HL Cas 593; *Holford v Bailey* (1849) 13 QB 426.

- 2 A corporeal fishery is sometimes described as a 'territorial fishery', a term also used to describe a fishery which is appurtenant to or parcel of a manor: see *Neil v Duke of Devonshire* (1882) 8 App Cas 135, HL.
- 3 As to corporeal and incorporeal hereditaments generally see REAL PROPERTY.
- 4 As to several fisheries see para 805 post.
- 5 Where the terms of the grant are unknown it may be presumed that the owner of a several fishery is the owner of the soil, but where the terms of the grant appear and convey no more than an incorporeal hereditament then the presumption is destroyed: *Duke of Somerset v Fogwell* (1826) 5 B & C 875. See para 804 post.
- 6 *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732; affd (1865) 6 B & S 570, Ex Ch.
- 7 See *A-G v Emerson* [1891] AC 649 at 656, HL, per Lord Herschell; *Harris v Earl of Chesterfield* [1911] AC 623, HL; Hale's de Jure Maris (Hargrave's Law Tracts 18).
- 8 See further CUSTOM AND USAGE vol 12(1) (Reissue) para 695 et seq; REAL PROPERTY vol 39(2) (Reissue) para 7. As to leases generally see LANDLORD AND TENANT.
- 9 *A-G v Emerson* [1891] AC 649 at 656, HL, per Lord Herschell.

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### **790. Co-existence of fisheries.**

It is possible for a corporeal fishery and an incorporeal fishery to exist over the same extent of land; for instance, one person may own the soil and the shellfishery over it, and another may own the right of fishing for the floating fish, each having a fishery as a separate and distinct hereditament<sup>1</sup>.

If, however, the ownership of an incorporeal fishery and of the soil under it becomes united in the same hand, then the fishery merges in the soil and becomes a corporeal hereditament<sup>2</sup>. Similarly, one person may own two separate fisheries over the same extent of land, for he may own the soil and the fishery over it, and also the franchise fishery for royal fish, separate hereditaments which do not merge by the ownership of the soil<sup>3</sup>.

- 1 Hence the rights can be divided so that the owner grants the right to fish for oysters but retains the right to fish for floating fish: *Seymour v Courtenay* (1771) 5 Burr 2814; *Rogers v Allen* (1808) 1 Camp 309.
- 2 *Sury v Pigot* (1626) Poph 166 at 170 per Whitlock CJ.
- 3 See para 807 post. As to the Crown's right of fishing and to royal fish see para 807 note 1 post. As to Crown lands generally see CROWN PROPERTY.

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### **791. Public and private fisheries.**



A fishery may be vested in the public at large, in which case it is described as a public fishery<sup>1</sup>, or it may be vested in one or more individuals, in which case it is called a private fishery<sup>2</sup>. A private fishery may be either a several fishery<sup>3</sup> or a common of fishery<sup>4</sup>.

1 See para 797 et seq post.

2 See para 803 et seq post.

3 See para 805 post. A several fishery is also known as a free fishery: see *Malcolmson v O'Dea* (1863) 10 HL Cas 593 at 619 per Willes J.

4 See para 806 post.

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## **B. FISHERIES AND NAVIGATION**

### **792. The right of navigation.**

The right of navigation is a public right of way over tidal waters<sup>1</sup>. A similar right may be acquired over non-tidal waters. The right is a right to pass and repass over the water and includes a right of anchoring, mooring, landing and grounding where necessary in the ordinary course of navigation<sup>2</sup>. Where it exists, the right takes precedence over the right of fishing, and a navigator may place his ship in a fishery and stay there as long as is reasonably necessary for the purposes of navigation, but he must not abuse his right by acting wantonly or maliciously so as to damage the fishery<sup>3</sup>. In the exercise of his right the navigator must not let his vessel ground on the fishery so as to do damage, unless in the course of its navigation it becomes necessary to do so<sup>4</sup>. If he acts negligently in this respect he may be sued at common law, or his ship may be arrested in an Admiralty action<sup>5</sup>. However, where no right of navigation exists the use of waters for navigation will be a trespass actionable without proof of damage<sup>6</sup>.

1 A private right can be acquired by immemorial usage by the public, by statute, by dedication to the public. Also a private right may exist by grant. As to navigation see WATER AND WATERWAYS vol 101 (2009) PARA 688 et seq.

2 *The Swift* [1901] P 168 (tidal waters); *Orr-Ewing v Colquhoun* (1877) 2 App Cas 839, HL (non-tidal river). The right of anchoring is a necessary part of the right of navigation: *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192 at 208; *A-G v Wright* [1897] 2 QB 318, CA; and see WATER AND WATERWAYS.

3 *Anon* (1808) 1 Camp 517n; and see *Wills' Trustees v Cairngorm Canoeing and Sailing School Ltd* 1976 SLT 162, HL. For an exception to the rule see para 794 post.

4 *The Bien* [1911] P 40; *The Octavia Stella* (1887) 6 Asp MLC 182; *Colchester Corp v Brooke* (1845) 7 QB 339. It is only in special circumstances that there is any right to ground or sit on the bottom of a river: *The Carlgarth, The Otarama* [1927] P 93 at 107, CA, per Scrutton LJ.

5 *The Swift* [1901] P 168. As to the arrest of a ship see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 162-164.

6 See *Rawson v Peters* (1972) 116 Sol Jo 884, CA; *Wills' Trustees v Cairngorm Canoeing and Sailing School Ltd* 1976 SLT 162, HL.

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### **793. Obstruction of the right.**

Fisheries must not be carried on so as to be a nuisance to navigation<sup>1</sup>, but the navigator must not damage the fishery or abate an obstruction unless it does him some special injury beyond that suffered by the rest of the public<sup>2</sup>. His remedy is by indictment<sup>3</sup>. Erections in the soil, originally not nuisances to navigation, may become so owing to the navigable channel changing its course, because, unless authorised by statute, they can have been erected in navigable waters subject only to the paramount right of navigation<sup>4</sup>.

- 1 *Colchester Corpn v Brooke* (1845) 7 QB 339; Hale's de Portibus Maris (Hargrave's Law Tracts 85).
- 2 *Colchester Corpn v Brooke* (1845) 7 QB 339; *Dimes v Petley* (1850) 15 QB 276 at 283.
- 3 *R v Betts* (1850) 16 QB 1022.
- 4 *Williams v Wilcox* (1838) 8 Ad & El 314.

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### **794. Fishing boats and collision regulations.**

There is an exception to the rule that the right of navigation is paramount<sup>1</sup>. Except where the rules of the Collision Regulations 1972<sup>2</sup> relating to narrow channels<sup>3</sup>, traffic separation schemes<sup>4</sup> and overtaking<sup>5</sup> otherwise require, a power-driven vessel and a sailing vessel underway must keep out of the way of a vessel engaged in fishing<sup>6</sup>. However, a vessel engaged in fishing when underway must, so far as possible, keep out of the way of vessels not under command and vessels restricted in the ability to manoeuvre<sup>7</sup>.

- 1 As to the right of navigation see para 792 ante.
- 2 Vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, apply must comply with the provisions of the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962) rr 1-36, Annexes I-III (as amended) ('the Collision Regulations 1972'): see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4. As to the vessels to which the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, apply: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 716.
- 3 Ie the Collision Regulations 1972 r 9: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 728.
- 4 Ie ibid r 10: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 730.
- 5 Ie ibid r 13: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 732.
- 6 Ibid r 18(a), (b): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 737.
- 7 Ibid r 18(c): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 737.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(i) Fisheries in General/B. FISHERIES AND NAVIGATION/795. High seas.

### **795. High seas.**

At common law 'high seas' commence at low water mark, and comprise all the sea beyond the low water mark<sup>1</sup>. However, by international law, high seas comprise the sea beyond territorial limits, including fishery limits, claimed by any nation<sup>2</sup>. All fisheries upon the high seas are *prima facie* open to vessels of all nations<sup>3</sup>. The principle of freedom of the seas is stated by the United Nations Conference on the Law of the Seas 1982 to include, *inter alia*, freedom of fishing<sup>4</sup>. The freedom of the high seas must be exercised by all states with reasonable regard to the interests of other states in their exercise of that freedom<sup>5</sup>. A coastal state is entitled to establish territorial waters up to a limit not exceeding 12 nautical miles<sup>6</sup>. Further, a coastal state may establish an exclusive economic zone permitting it, *inter alia*, to exploit natural resources (including fishing) within that zone<sup>7</sup>. The law of England and Wales establishes fishery limits in territorial waters within the framework of international law<sup>8</sup>.

1 See *R v Keyn* (1856) 2 Ex D 63.

2 Statements of law relating to high seas are now found in the United Nations Convention on the Law of the Sea (UNCLOS) (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 147 et seq; SHIPPING AND MARITIME LAW vol 93 (2008) PARA 10), which re-states and develops statements of law first established by the Geneva Convention on the Law of the Sea in 1958 (see the Report on the First United Nations Conference on the Law of the Sea, with Final Act, Conventions and Resolutions (1958) (Cmnd 584)) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 9).

3 See Grotius' *de Jure Belli et Pacis* More Liberum (1609).

4 See UNCLOS Pt VII section 2 (arts 116-120).

5 See *ibid* art 87; para 961 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 147 et seq.

6 See *ibid* art 3; para 961 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 123 et seq.

7 See *ibid* arts 55, 57; para 961 post; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 154.

8 See the Territorial Sea Act 1987; the Fishery Limits Act 1976; and para 961 post.

## **UPDATE**

### **795 High seas**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(i) Fisheries in General/B. FISHERIES AND NAVIGATION/796. Fishing rights in the European Community.

## **796. Fishing rights in the European Community.**

There is a major exception to the general principles of international law relating to territorial waters<sup>1</sup>. Within the European Union, the administration and management is carried out under the Common Fisheries Policy of the European Union ('CFP'), which came into effect in 1983, in accordance with the obligations laid down in the original treaties establishing the European Community<sup>2</sup>. The CFP has the fundamental aim of ensuring the sustainable exploitation of living aquatic resources and aquaculture through conservation and management policies designed to protect resources and reflect the needs of the fishing industry and consumers. Common measures have been agreed in relation to conservation and limitation of the environmental impact of fishing through the implementation of catch quotas (total allowable catches) and measures relating to fishing gear restrictions and minimum landing sizes. There is also a common structural policy aimed at balancing fleet capacity and available resources. The CFP aims to maintain a common organisation of the market in fish products and to match supply and demand for the benefit of both producers and consumers and to set up fisheries partnerships agreements and to negotiate at the international level within regional and international fisheries organisations for common conservation measures in deep-sea fisheries<sup>3</sup>.

If any fishing boat<sup>4</sup> fishes within British fishery limits<sup>5</sup> in contravention of an enforceable Community restriction<sup>6</sup> the master<sup>7</sup>, the owner and the charterer, if any, are each guilty of an offence<sup>8</sup>. The Secretary of State or the Welsh Ministers<sup>9</sup> may by order make such provision as appears to be requisite for the enforcement of any enforceable Community restriction or other obligation relating to sea fishing<sup>10</sup>.

1 As to international law relating to the high seas see para 795 ante.

2 I.e. under the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (amended by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). As to the common agricultural policy see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 701 et seq. As to the European Fisheries Fund see para 1069 post. As to water quality standards see WATER AND WATERWAYS vol 100 (2009) PARA 25. As to fish and shellfish hygiene see FOOD vol 18(2) (Reissue) para 341 et seq.

3 The basic regulatory structure for the CFP was established by EEC Council Regulation 3760/92 (OJ L389, 31.12.92, p 1) establishing a Community system for fisheries and aquaculture. This was repealed and replaced by EC Council Regulation 2371/2002 (OJ L358, 31.12.2002, p 59) on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

4 For this purpose, 'fishing boat' means vessel for the time being employed in fishing operations or any operations ancillary thereto: Fisheries Act 1981 s 30(3).

5 As to British fishery limits see para 961 post.

6 I.e. a restriction to which the European Communities Act 1972 s 2(1) applies: Fisheries Act 1981 s 30(3).

7 'Master' includes, in relation to any fishing boat, the person for the time being in command or in charge of the boat: *ibid* s 30(3).

8 *Ibid* s 30(1)(a). The Sea Fish (Conservation) Act 1967 ss 11, 12, 14, 15(2) (see para 980 et seq post) in relation to penalties, jurisdiction and powers of seizure (see para 989 post) apply to such offences as they apply to offences under s 5(1) (see para 989 post): Fisheries Act 1981 s 30(1)(b). The Sea Fisheries Act 1968 s 8 (see paras 1002-1004 post) also has effect in relation to such restrictions with regard to the general powers of British sea fishery officers: Fisheries Act 1981 s 30(1)(c).

9 As to the Secretary of State and the Welsh Ministers see para 846 post.

10 Fisheries Act 1981 s 30(2). Any order made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 30(4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. Any order made under the Fisheries Act 1981 s 30 may in particular contain provisions which, with any necessary modifications, apply or correspond to any relevant provisions of the Sea Fish (Conservation) Act 1967 or the Sea Fisheries Act 1968: Fisheries Act 1981 s 30(2). In exercise of this power various orders have been made (some of which are temporary in nature and are not listed in this work), including: Fishing (Enforcement of Community Licensing Measures) (North of Scotland Box) Order 1984, SI 1984/291; Sea Fishing (Enforcement of Community Measures for Spanish and Portuguese Vessels) Order 1986, SI 1986/110; Fishing Boats (Marking and Documentation) (Enforcement) Order 1993, SI 1993/2015; Sea Fishing (Enforcement of Community Control Measures) Order 2000, SI 2000/51 (amended by SI 2003/229; SI 2003/1535; SI 2004/38; SI 2004/398; SI 2005/393; SI 2005/617; SI 2005/2624); Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2000, SI 2000/181 (amended by SI 2001/3912; SI 2002/794; SI 2004/3226; SI 2005/617) (which now applies to Wales only); Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2000, SI 2000/827 (amended by SI 2000/2008; SI 2001/1631; SI 2005/617) (which now applies to Wales only); Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000, SI 2000/976; Sea Fishing (Enforcement of Community Control Measures) (Wales) Order 2000, SI 2000/1075 (amended by SI 2003/559; SI 2005/617); Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000, SI 2000/1078 (amended by SI 2002/677; SI 2005/617); Sea Fishing (Enforcement of Community Conservation Measures) Order 2000, SI 2000/1081 (amended by SI 2002/426; SI 2002/794; SI 2005/617); Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000, SI 2000/1096 (amended by SI 2005/617); Sea Fishing (North-East Atlantic Control Measures) Order 2000, SI 2000/1843 (amended by SI 2005/617); Sea Fishing (Enforcement of Community Conservation Measures) (Wales) Order 2000, SI 2000/2230 (amended by SI 2005/617); Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) Order 2002, SI 2002/272 (amended by SI 2003/772) (which applies to Wales only); Sea Fishing (Restriction on Days at Sea) (No 2) Order 2003, SI 2003/1535 (amended by SI 2004/38; SI 2004/398; SI 2005/617) (which now applies to Wales only); Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004, SI 2004/3226 (amended by SI 2005/617); Incidental Catches of Cetaceans in Fisheries (England) Order 2005, SI 2005/17 (amended by SI 2005/617); Sea Fishing (Restriction on Days at Sea) Order 2005, SI 2005/393 (amended by SI 2006/1327); Sea Fishing (Restriction on Days at Sea) (Monitoring, Inspection and Surveillance Order 2006, SI 2006/1327; Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006, SI 2006/1549; Sea Fishing (Northern Hake Stock) (Wales) Order 2006, SI 2006/1796; Sea Fishing (Enforcement of Annual Community and Third Country Fishing Measures) (England) Order 2006, SI 2006/1970; Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2006, SI 2006/2798; Sea Fishing (Restriction on Days at Sea) Order 2007, SI 2007/927.

See also Case 24/83 *Geweise v Mackenzie* [1984] 2 All ER 129, [1984] ECR 817, ECJ; *Unity FR 165 v Ministry of Agriculture, Fisheries and Food* (1999) Times, 20 January.

## UPDATE

### 796 Fishing rights in the European Community

TEXT AND NOTES--Fisheries Act 1981 s 30 amended: Marine and Coastal Access Act 2009 s 293.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Regulation 2371/2002 amended: EC Council Regulation 865/2007 (OJ L192, 24.7.2007, p 1).

NOTE 10--SI 2000/976 amended and SI 2000/2230 further amended: SI 2010/630 (Wales).

See also the Sea Fishing (Prohibition on the Removal of Shark Fins) Order 2007, SI 2007/2554; the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008, SI 2008/984 (amended by SI 2010/630 (Wales)); the Sea Fishing (Recovery Measures) Order 2008, SI 2008/2347; and the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009, SI 2009/3391. SI 2005/393, SI 2006/1327, SI

2006/1796 revoked: SI 2008/2347. As to the criminal liability of partnerships under SI 2000/51 see *R v W Stevenson & Sons (a partnership)* [2008] EWCA Crim 273, [2008] Bus LR 1200, [2008] All ER (D) 351 (Feb). SI 2000/51 further amended: SI 2009/1847. SI 2006/1970 revoked: see now the Sea Fishing (Landing and Weighing of Herring, Mackerel and Horse Mackerel) Order 2009, SI 2009/1850.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/797. Territorial tidal waters.

## **(ii) Public Fisheries**

### **797. Territorial tidal waters.**

At common law the public has a right to fish in the tidal reaches of all rivers and estuaries and in the high seas and arms of the sea and from the foreshore<sup>1</sup>, except where the Crown or some subject has acquired a propriety exclusive of the public right<sup>2</sup> or where Parliament has restricted the common law rights of the public<sup>3</sup>. The right of public fishing can only be curtailed by Act of Parliament or as a result of international conventions confirmed by statute<sup>4</sup>.

1 *Royal Fishery of Banne Case* (1610) Dav Ir 55; *Warren v Matthews* (1703) 1 Salk 357; *Ward v Creswell* (1741) Willes 265; *Carter v Murcot* (1768) 4 Burr 2163; *Bagott v Orr* (1801) 2 Bos & P 472; *A-G for British Columbia v A-G for Canada* [1914] AC 153 at 169, PC (origin of right).

2 Hale's de Jure Maris (Hargrave's Law Tracts 11); *Lord Fitzwalter's Case* (1674) 1 Mod Rep 105; *Carter v Murcot* (1768) 4 Burr 2163; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 158, HL, per Lord O'Hagan (the subject may acquire his right by grant or prescription); and see *Vivian v Blake* (1809) 11 East 263 (Crown's exclusive right).

3 See eg the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended) (which creates certain oyster, mussel, cockle and clam fisheries); and para 1032 post.

4 See *Malcomson v O'Dea* (1863) 10 HL Cas 593.

## **UPDATE**

### **797 Territorial tidal waters**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/798. Non-tidal waters.

### **798. Non-tidal waters.**

The general public has no common right to fish in waters that are not tidal<sup>1</sup> even though such waters happen to be navigable<sup>2</sup>. The right of fishing non-tidal waters derives from the ownership of the bed of the river<sup>3</sup>.

1 *Reece v Miller* (1882) 8 QBD 626 (River Wye; navigable; water at point in dispute affected by tide only in abnormal circumstances; 'non-tidal river').

2 *Pearce v Scotcher* (1882) 9 QBD 162 (River Dee; partly navigable; non-tidal); *Hudson v MacRae* (1863) 4 B & S 585 (River Wandle; non-navigable); *Murphy v Ryan* (1868) IR 2 CL 143 (River Barrow; non-tidal, navigable, immemorial user by public); *Bloomfield v Johnston* (1868) IR 8 CL 68 (Lough Erne; non-tidal, navigable); *Hargreaves v Diddams* (1875) LR 10 QB 582 (River Itchen; made navigable by statute); *Mussett v Burch* (1876) 35 LT 486 (River Stour, Suffolk; made navigable); *Pery v Thornton* (1889) 23 LR Ir 402 (Lough Conn; non-tidal, navigable); *Smith v Andrews* [1891] 2 Ch 678 (River Thames); *Micklethwait v Vincent* (1892) 67 LT 225 (affd (1893) 69 LT 57, CA) (Hickling Broad, Norfolk; non-tidal, public right of way over Broad but no public right of fishing).

3 See para 789 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/799. User by the public.

### **799. User by the public.**

Whatever mode of fishing is employed by the public, and however long continued, the public can acquire no right to fish in tidal waters which have once been the subject of a several fishery<sup>1</sup> or in non-tidal waters<sup>2</sup>. This is because a vague and fluctuating body like the public cannot prescribe for a profit à prendre in alieno solo<sup>3</sup>, nor acquire it by custom<sup>4</sup> or under any statute of limitation<sup>5</sup>, and because an incorporeal right like a fishery cannot be abandoned but can pass only by deed<sup>6</sup>. The public, indeed, cannot be the grantee of a fishery or of any other kind of real property<sup>6</sup>. However, user by the public or by any other fluctuating body may be evidence that the ownership of a fishery is not in the person asserting a paper title<sup>7</sup>.

1 *Neill v Duke of Devonshire* (1882) 8 App Cas 135, HL. As to several fisheries see para 805 post.

2 *Smith v Andrews* [1891] 2 Ch 678; *Blount v Layard* (1888) [1891] 2 Ch 681n at 690, CA, per Bowen LJ; *Pery v Thornton* (1889) 23 LR Ir 402; *Murphy v Ryan* (1868) IR 2 CL 143. See para 798 ante.

3 *Lord Rivers v Adams* (1878) 3 ExD 361; *Smith v Andrews* [1891] 2 Ch 678 at 700 per North J. A common of piscary may be claimed by prescription: see COMMONS vol 13 (2009) PARAS 461-464. For the law relating to profits à prendre generally see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 254 et seq. As to prescription see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 274 et seq.

4 *A-G v Mathias* (1858) 4 K & J 579 at 591 per Byles J; *Murphy v Ryan* (1868) IR 2 CL 143 at 155 per O'Hagan J; *Goodman v Saltash Corp* (1882) 7 App Cas 633 at 648, HL, per Lord Cairns; *Smith v Andrews* [1891] 2 Ch 678 at 699 per North J. Customary rights can be claimed only in right of tenements formerly copyhold: see REAL PROPERTY vol 39(2) (Reissue) PARA 31 et seq; CUSTOM AND USAGE vol 12(1) (Reissue) para 642.

5 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 154, HL, per Lord Selborne LC. As to statutes of limitation see generally LIMITATION PERIODS.

6 *Goodman v Saltash Corp* (1882) 7 App Cas 633 at 648, HL, per Earl Cairns.

7 *Smith v Andrews* [1891] 2 Ch 678; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/800. The right to fish in the sea and tidal waters.

### **800. The right to fish in the sea and tidal waters.**

All citizens of the Crown are entitled as a matter of public right to fish in tidal waters including the high seas, estuaries and tidal watercourses as well as from the foreshore<sup>1</sup>. This right derives from the presumption that the bed of tidal waters rests in the Crown. The public right to fish in these waters derives from Magna Carta<sup>2</sup>. The right extends only to the mean high water mark of ordinary tides<sup>3</sup> and so far up rivers as the tide in the ordinary course of things flows and reflows<sup>4</sup>. It is a question of fact, to be decided on evidence of the ebb and flow, whether at any point there is a sufficient tidal influence for the water at that point to be considered tidal<sup>5</sup>. Such tidal influence may be either a horizontal or a vertical movement<sup>6</sup> of the water, but some horizontal and vertical movements are not caused by any tidal influence<sup>7</sup>. The saltiness of the water at the point in question is of no necessary significance<sup>8</sup>. The question depends on ordinary and not on abnormal tides<sup>9</sup>. The extent of the public right is affected by the accretion and dereliction of land from and to the sea in as much as the right extends over the foreshore wherever it may be from time to time<sup>10</sup>.

1 *Malcolmson v O'Dea* (1863) 10 HL Cas 593; *A-G for British Columbia v A-G for Canada* [1914] AC 153, PC.

2 Magna Carta 9 Henry III (1225) established that the public 'have liberty of fishing in the sea and the creeks or arms thereof'. See Hale's de Jure Maris Ch IV.

3 *Lowe v Govett* (1832) 3 B & Ad 863; *A-G v Chambers* (1854) 4 De GM & G 206.

4 Hale's de Jure Maris (Hargrave's Law Tracts 12); *Malcolmson v O'Dea* (1863) 10 HL Cas 593; *Murphy v Ryan* (1868) IR 2 CL 143.

5 *Ingram v Percival* [1969] 1 QB 548, [1968] 3 All ER 657, DC.

6 *West Riding of Yorkshire Rivers Board v Tadcaster RDC* (1907) 97 LT 436; *Calcraft v Guest*, cited in Stuart Moore's History and Law of Fisheries 102 (reported on another point [1898] 1 QB 759, CA); and see generally WATER AND WATERWAYS vol 100 (2009) PARA 71. See, however, *Blower v Ellis* (1886) 50 JP 326, DC.

7 *A-G v Chambers* (1854) 4 De GM & G 206; *Reece v Miller* (1882) 8 QBD 626; *Micklethwait v Vincent* (1892) 67 LT 225.

8 Hale's de Jure Maris (Hargrave's Law Tracts 12); *R v Smith* (1780) 2 Doug KB 441; *Reece v Miller* (1882) 8 QBD 626; *Micklethwait v Vincent* (1892) 67 LT 225; *West Riding of Yorkshire Rivers Board v Tadcaster RDC* (1907) 97 LT 436.

9 Hale's de Jure Maris (Hargrave's Law Tracts 12, 25, 26); *A-G v Chambers* (1854) 4 De GM & G 206; *Reece v Miller* (1882) 8 QBD 626; *Blower v Ellis* (1886) 50 JP 326; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 401 per Parker J; and see *Blundell v Catterall* (1821) 5 B & Ald 268 at 291 per Holroyd J.

10 *Carlisle Corp v Graham* (1869) LR 4 Exch 361; *Mercer v Denne* [1904] 2 Ch 534 (affd [1905] 2 Ch 538, CA). For a discussion of the effect of accretion and dereliction see *Hindson v Ashby* [1896] 2 Ch 1, CA; *Gifford v Lord Yarborough* (1828) 5 Bing 163, HL; *Brighton and Hove General Gas Co v Hove Bungalows Ltd* [1924] 1 Ch 372; *A-G v McCarthy* [1911] 2 IR 260; and WATER AND WATERWAYS vol 100 (2009) PARA 39 et seq.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/801. Mode of fishing by the public.



### 801. Mode of fishing by the public.

The public right of fishing must be exercised reasonably and in accordance with the statute law<sup>1</sup>. The public has no right to fish by kiddles, weirs or other engines fixed in the soil, for such methods involve a use of the soil which cannot be vested in the public but must belong either to the Crown or to some private owner<sup>2</sup>. The public may, however, lay lines, draw nets and adopt any other ordinary mode of fishing<sup>3</sup>. The public may take shellfish<sup>4</sup>, even though they were laid down by some other fisherman<sup>5</sup>. No member of the public as such may assert a right to the exclusive possession of part of the foreshore for storing shellfish as an incident of his right to fish<sup>6</sup>. The public right may not be exercised for commercial purposes<sup>7</sup>.

1 *Whelan v Hewson* (1871) IR 6 CL 283. The method of fishing must comply with relevant statutes, eg the Salmon and Freshwater Fisheries Act 1975 (see para 848 et seq post) and the Sea Fisheries (Shellfish) Act 1967 (see para 1032 et seq post).

2 *A-G for British Columbia v A-G for Canada* [1914] AC 153 at 171, PC; and see Hale's de Jure Maris (Hargrave's Law Tracts 18).

3 *Bevins v Bird* (1865) 12 LT 306 at 307, DC, per Cockburn CJ; and see *A-G for Canada v A-G for Quebec* [1921] 1 AC 413, PC.

4 There is some doubt whether there is any right to take empty fish shells: *Bagott v Orr* (1801) 2 Bos & P 472.

5 *Truro Corp v Rowe* [1902] 2 KB 709, CA. It is otherwise if they were laid in a several fishery or oyster bed in the exclusive possession of some person: *R v Downing* (1870) 23 LT 398; *Foster v Warblington UDC* [1906] 1 KB 648, CA; and see para 838 et seq post.

6 *Truro Corp v Rowe* [1902] 2 KB 709, CA. But an individual in his private capacity may acquire title to oyster layings on the foreshore by prescription, grant or otherwise: *Foster v Warblington UDC* [1906] 1 KB 648, CA.

7 *Anderson v Alnwick District Council* [1993] 3 All ER 613, [1993] 1 WLR 1156.

### UPDATE

### 801 Mode of fishing by the public

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(ii) Public Fisheries/802. The right to use the foreshore and banks.

### 802. The right to use the foreshore and banks.

Apart from the special custom of a particular locality<sup>1</sup>, or by statute<sup>2</sup>, the public has no right when fishing to go upon land above high water mark<sup>3</sup>. The public as such has no general right to use the foreshore<sup>4</sup>, but there is a right to cross it to and from the sea for the purpose of fishing but only from such places as usage or necessity have appropriated to that purpose<sup>5</sup>.

When, however, the foreshore is covered by water the public right to fish in tidal waters applies<sup>6</sup>. The public may not beach boats and leave them above high water mark for future use<sup>7</sup>, nor land nets and leave them drying above high water mark<sup>8</sup>. There are at common law, however, some rights that do exist over the foreshore, and these include the right to take shellfish<sup>9</sup>, and the right to dig for lugworms for use as bait<sup>10</sup>.

1 *Mercer v Denne* [1905] 2 Ch 538, CA (custom of Kent); Hale's De Portibus Maris (Hargrave's Law Tracts 86); *Anon* (1468) YB 8 Edw 4, fo 18, pl 30.

2 In Somerset, Devon and Cornwall there is a right to go upon land adjoining the coast for certain purposes connected with fishing for herring, pilchard and other fish caught with seine nets (1 Jac 1 c 23 (1603-4)), and herring fishers have certain rights of landing fish and drying nets on the foreshore and on waste or uncultivated land within 100 yards of the highest high water mark in all parts of Great Britain: White Herring Fisheries Act 1771 s 11.

3 *Earl of Ilchester v Raishleigh* (1889) 61 LT 477.

4 *Brinckman v Matley* [1904] 2 Ch 313, CA; and see WATER AND WATERWAYS vol 100 (2009) PARA 46 et seq.

5 *Blundell v Catterall* (1821) 5 B & Ald 268; *Brinckman v Matley* [1904] 2 Ch 313, CA; *Behrens v Richards* [1905] 2 Ch 614; and see *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 at 165 per Parker J.

6 See para 800 ante.

7 *Ward v Creswell* (1741) Willes 265; *Earl of Ilchester v Raishleigh* (1889) 61 LT 477; and see *Aiton v Stephen* (1876) 1 App Cas 456, HL.

8 *Ipswich Inhabitants v Browne* (1581) Sav 11 at 14, Ex Ch.

9 See *Brinckman v Matley* [1904] 2 Ch 313.

10 See *Anderson v Alnwick District Council* [1993] 3 All ER 613, [1993] 1 WLR 1156.

## UPDATE

### 802 The right to use the foreshore and banks

NOTE 2--White Herring Fisheries Act 1771 repealed: Marine and Coastal Access Act 2009 s 234(a), Sch 22 Pt 5.

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### (iii) Private Fisheries

#### A. TIDAL AND NON-TIDAL FISHERIES

##### 803. Private fisheries in tidal waters.

Private or several fisheries in tidal waters owe their origin to some act of the Crown before Magna Carta by which the public right of fishing was excluded and the fishery was made exclusive for either the Crown or some subject<sup>1</sup>. Fisheries of this type can now be created only by act of the legislature<sup>2</sup>. The Crown may grant the foreshore to a subject but such a grant will

not carry with it the right to a several fishery<sup>3</sup>, and the soil will be subject to the public right of fishing over it<sup>4</sup>. A grant of a several fishery is presumed to carry the soil<sup>5</sup>.

1 Hale's de Jure Maris (Hargrave's Law Tracts 11); approved in *Neill v Duke of Devonshire* (1882) 8 App Cas 135, HL. See also para 797 note 2 ante. As to several fisheries see para 805 post. As to the Magna Carta of Edward I (25 Edw I) (1297) see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 1.

2 *Malcomson v O'Dea* (1863) 10 HL Cas 593; and see para 797 note 2 ante.

3 *A-G v Emerson* [1891] AC 649 at 654, HL, per Lord Herschell.

4 *A-G v Parmeter, Re Portsmouth Harbour* (1811) 10 Price 378; affd (1813) 10 Price 412, HL. As to Crown grants of the foreshore see CROWN PROPERTY vol 12(1) (Reissue) para 242 et seq.

5 *A-G v Emerson* [1891] AC 649 at 654, HL, per Lord Herschell; *Scrutton v Brown* (1825) 4 B & C 485.

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#### **804. Private fisheries in non-tidal waters.**

The right of fishing, being in its nature a profit of the soil and dependent upon and an incident of the ownership of the soil<sup>1</sup>, was originally vested in the Crown as owner of the soil of the kingdom<sup>2</sup>. The Crown either granted out the fishery as a separate hereditament, or with the adjoining manor as parcel of it, or retained possession of it<sup>3</sup>. After passing from the Crown the right of fishery has remained parcel of the manor or has been alienated either with the riparian land or as a separate hereditament. Owners of a fishery must now either be, or derive their right from, the owners of the soil<sup>4</sup>.

1 *Anon* (1495) YB 10 Hen 7, fo 24B, pl 1, 26B, pl 5; *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732; and see 2 Bl Com (14th Edn) 39. See also para 789 ante.

2 *Carlisle Corpn v Graham* (1869) LR 4 Exch 361; *Murphy v Ryan* (1868) IR 2 CL 143 at 149 per O'Hagan J.

3 *Royal Fishery of Banne Case* (1610) Dav Ir 55, where the Crown granted out the riparian land and retained the fishery and soil of the river. As to the law relating to manors see CUSTOM AND USAGE vol 12(1) (Reissue) para 695 et seq.

4 *Carlisle Corpn v Graham* (1869) LR 4 Exch 361 at 371 per Bramwell J; and see *Holford v Bailey* (1849) 13 QB 426, Ex Ch.

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### **B. KINDS OF PRIVATE FISHERY**

#### **805. Several fisheries.**

A private right of fishing, whether in tidal or non-tidal waters, is either a right of several fishery or of common of fishery<sup>1</sup>. A several fishery is an exclusive right of fishing in a given place, either with or without the property in the soil<sup>2</sup>. By exclusive is meant that no other person has a co-extensive right with the owner<sup>3</sup>. The fact that some other person: (1) has a right to a particular class of fish in the fishery; (2) has a right to fish in common with the owner of the several fishery; or (3) is entitled to fish at a certain time of the year under a presumed trust in his favour or otherwise, does not destroy the severalty of the fishery<sup>4</sup>.

1 It has been stated that there is another kind of fishery, namely a free fishery, being either a fishery derived from the Crown at a place where prima facie the public has a right of fishing or an unlimited common of fishery (see Oke's Fishery Laws (3rd Edn) 14; Woolrych's Law of Waters (2nd Edn) 126); but see, however, *Malcomson v O'Dea* (1863) 10 HL Cas 593 at 619 per Willes J, approving *Holford v Bailey* (1849) 13 QB 426, holding that the only distinction is between an exclusive right of fishery called 'several' or 'free' and a right in common with others called 'common' or, sometimes, 'free'.

2 *Malcomson v O'Dea* (1863) 10 HL Cas 593; *Hanbury v Jenkins* [1901] 2 Ch 401 at 411.

3 *Seymour v Courtenay* (1771) 5 Burr 2814.

4 *Seymour v Courtenay* (1771) 5 Burr 2814 (oysters and fish for table); *Rogers v Allen* (1808) 1 Camp 309 (fishery for oysters); *Ecroyd v Coulthard* [1897] 2 Ch 554 (affd [1898] 2 Ch 358, CA) (fishery for lampreys); *Tilbury v Silva* (1890) 45 ChD 98, CA (common of fishery); *Goodman v Saltash Corpn* (1882) 7 App Cas 633, HL (trust in favour of a class of inhabitants); *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 at 161 per Parker J (several fishery subject to a customary right for the inhabitants of a manor to fish at certain states of the tide upon terms).

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### 806. Common of fishery.

Common of fishery or common piscary<sup>1</sup> is a liberty of fishing in another man's waters in common with certain other persons who might be the owners of the soil or other persons enjoying the same right<sup>2</sup>. It may be held as either appurtenant to a house or land (but not to a pasture<sup>3</sup>), or in gross<sup>4</sup>, but if appurtenant may not be without stint<sup>5</sup>. When not held in gross it may be claimed under the Prescription Act 1832<sup>6</sup>.

1 See further COMMONS vol 13 (2009) PARAS 461-464.

2 See Wisdom's Law of Watercourses (5th Edn) p 175; 2 Bl Com (14th Edn) 34.

3 *Edgar v English Fisheries Special Comrs* (1870) 23 LT 732.

4 See Woolrych's Law of Waters (2nd Edn) 127. It is doubtful whether common of fishery can be appendant, as there is no recorded instance of its ever having been attached by law to the estates of any class of socage tenants in a manor: see Elton on Commons 105; but see *Anon* (1464) YB 4 Edw 4, fo 29B, pl 7, where a plea of common of fishery appendant to a house and land was held to be good. See also COMMONS vol 13 (2009) PARA 461. As the law relating to manors see CUSTOM AND USAGE vol 12(1) (Reissue) para 695 et seq.

5 If appurtenant it may not be without limit: see *Lord Chesterfield v Harris* [1908] 2 Ch 397, CA; affd sub nom *Harris v Earl of Chesterfield* [1911] AC 623, HL.

6 *Shuttleworth v Le Fleming* (1865) 19 CBNS 687. As to proof of a claim by immemorial usage see *Payne v Ecclesiastical Comrs and Landon* (1913) 30 TLR 167. The claim which was the same as the claim admitted to be valid in *Tilbury v Silva* (1890) 45 ChD 98, CA, was held not to have had a lawful origin. As to the creation of a profit à prendre by prescription see also EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) paras 274-279.

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### **807. Royal fish franchise fisheries.**

Whales, sturgeon and porpoise caught in water or found on the shore belong to the Crown<sup>1</sup>. There is one special right of fishery which is a franchise, that is to say a royal privilege in the hands of a subject<sup>2</sup>. This is the right to take whales and sturgeon, which are royal fish<sup>3</sup>, within the waters of the realm. Unless he is a grantee of the Crown the captor has no property in such fish, even though he is the owner of a several fishery at the spot where the fish is caught. Subject to this exception, it is doubtful whether any fishery can be a franchise<sup>4</sup>.

1 See De Prerogativa Regis 17 Ed II, 1 c 11 (1324); *Royal Fishery of Banne Case* (1619) Dav Ir 55; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 29; CROWN PROPERTY vol 12(1) (Reissue) para 229.

2 As to franchises see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 879. A franchise is a royal privilege or branch of the royal prerogative subsisting in the hands of a subject by grant from the monarch: Chitty *Law of the Prerogatives of the Crown* p 119.

3 Statute Prerogative Regis (temp incert) c 132, which described sturgeons as great sturgeons. The prerogative right to royal fish is expressly preserved by the Wild Creatures and Forest Laws Act 1971: see s 1(1); and CROWN PROPERTY vol 12(1) (Reissue) para 227.

4 As to the law relating to royal fish see further CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 29; CROWN PROPERTY vol 12(1) (Reissue) para 229. See also para 1071 post.

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## **C. TENURE AND ALIENATION OF FISHERIES**

### **808. Tenure.**

An incorporeal fishery may be held in gross<sup>1</sup> or appurtenant to or parcel of a manor or appurtenant to land<sup>2</sup>. An incorporeal fishery in gross is a profit à prendre<sup>3</sup>. Profits à prendre, when the subject of an absolute grant or for a lease of more than seven years, are capable of registration at the Land Registry<sup>4</sup>. In the case of a several fishery, the owner of the fishery is presumed, in the absence of evidence to the contrary, to be the owner of the soil<sup>5</sup>. Several fisheries may be freehold<sup>6</sup> or leasehold<sup>7</sup> and, formerly, copyhold<sup>8</sup>.

1 See para 789 ante.

2 *Royal Fishery of Banne Case* (1610) Dav Ir 55; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 153, HL, per Lord Selborne LC; *Staffordshire and Worcestershire Canal Navigation v Bradley* [1912] 1 Ch 91. A fishery in gross cannot be claimed under the Prescription Act 1832: *Shuttleworth v Le Fleming* (1865) 19 CBNS 687. As the law relating to manors see CUSTOM AND USAGE vol 12(1) (Reissue) para 695 et seq.

3 *Hayes v Bridges* (1795) Ridg L & S 390; *Rogers v Allen* (1808) 1 Camp 309; *Carter v Murcot* (1768) 4 Burr 2163.

4 See the Land Registration Act 2002 s 3(1); and LAND REGISTRATION vol 26 (2004 Reissue) para 826.

5 See *Hanbery v Jenkins* [1901] 2 Ch 401; *Hindson v Ashby* [1896] 2 Ch 1. As to several fisheries see para 805 ante.

6 See eg *Johnston v O'Neill* [1911] AC 552, HL.

7 See eg *Grove v Portal* [1902] 1 Ch 727.

8 See eg *A-G v Emerson* [1891] AC 649, HL. Copyholds were enfranchised on 1 January 1926: see REAL PROPERTY vol 39(2) (Reissue) para 31 et seq.

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### 809. Alienation.

Several fisheries pass in the same way as any other hereditaments<sup>1</sup>. Corporeal fisheries may pass by any mode of conveyance of corporeal property, but if incorporeal they can only pass by deed<sup>2</sup>.

1 As to several fisheries see para 805 ante.

2 *Bird v Higginson* (1835) 2 Ad & El 696 (affd (1837) 6 Ad & El 824, Ex Ch); *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 154, HL, per Lord Selborne LC; and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 10; EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 4. As to corporeal and incorporeal fisheries see para 789 ante.

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### 810. Leases.

The owner of a fishery may lease it as a corporeal hereditament with the soil, reserving a rent in the same way as other corporeal hereditaments are leased, or he may let only the incorporeal liberty of fishing either as to the whole of his fishery or for a limited class of fish or by certain modes of fishing<sup>1</sup>. Incorporeal rights lie in grant and not in livery and so a lease of an incorporeal fishery should be by deed under seal<sup>2</sup>.

A fishery may be let even without an agreed rent, and the landlord will be entitled to sue for a reasonable sum for use and occupation<sup>3</sup>. When the owner of the fishery is also riparian owner, a lease by him of the riparian land presumptively carries with it the right of fishing in the river on the other side of the land *usque ad medium filum aquae*<sup>4</sup>, and to defeat this presumption it is necessary to reserve the right of fishing in the lease<sup>5</sup>.

1 Where an incorporeal fishery is leased with other premises and the tenant occupies both for the purposes of his business he is entitled to security of tenure for both under the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended): see in particular s 32(3) (amended by the Law of Property Act 1969 s 8). See also *Whitley v Stumbles* [1930] AC 544, HL (decided under the Landlord and Tenant Act 1927 s 5 (repealed)). However, it is submitted that a lease of an incorporeal fishery without premises even where surrounding land is also let will not be entitled to security of tenure as the tenant will not occupy premises within the meaning of the Landlord and Tenant Act 1954. As to the treatment of fisheries for the purposes of value added tax see para 843 post. As to registration of leases of incorporeal fisheries see para 808 note 4 ante. Where a lease is of a corporeal fishery (ie including the soil) the normal rules as to registration of leases of land will apply: see the Land Registration Act 2002 s 4; and LAND REGISTRATION vol 26 (2004 Reissue) para 827.

2 *Duke of Somerset v Fogwell* (1826) 5 B & C 875; *Bird v Higginson* (1835) 2 Ad & El 696 (affd (1837) 6 Ad & El 824, Ex Ch). If the fishing is done under an agreement not under seal, the court will restrain the landlord from interfering: *Frogley v Earl of Lovelace* (1859) John 333 (game). As to the execution of deeds see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 27 et seq.

3 *Holford v Pritchard* (1849) 3 Exch 793.

4 *Davies v Jones* (1902) 18 TLR 367, sub nom *Jones v Davies* 86 LT 447, DC; cf *Doe d Freeland v Burt* (1787) 1 Term Rep 701 (where there was a contrary intention); and see Paterson's Fishery Laws (2nd Edn) 67. For the meaning of 'medium filum aquae' see para 824 post.

5 See, however, *Browne v Marquis of Sligo* (1859) 10 I Ch R 1, where evidence of surrounding circumstances was admitted to show intention. Where a fishery owner leased his fishery reserving 'one rod for his own use', he had only a personal right to fish and take away fish: *Re Vickers' Lease, Pocock v Vickers* [1947] Ch 420, [1947] 1 All ER 707, CA. As to the effect of a reservation of an incorporeal hereditament by deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 10; EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) paras 59, 273.

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## 811. Licence to fish.

Besides the power of leasing, the owner, by parol or by deed, may license persons to fish<sup>1</sup>. Such a licence may be oral and, if made in this way, will not give the licensee a right to take away the fish caught, because a licence to take away fish is a profit à prendre in alieno solo and an interest in land, and must be granted by deed under seal<sup>2</sup>. However, a licence can be granted by deed that can include the right to take away fish caught<sup>3</sup>.

An informal grant<sup>4</sup> or an agreement of which specific performance would be granted<sup>5</sup> is sufficient to pass an equitable right. An oral licence merely renders the act of fishing lawful, and may be revoked at any time, although reasonable notice of revocation must be given<sup>6</sup>. If valuable consideration has been given a claim for breach of contract is maintainable<sup>7</sup>.

1 As to licences required to be obtained by law see para 864 et seq post.

2 *Mason v Clarke* [1955] AC 778 at 798, [1955] 1 All ER 914 at 923, HL, per Lord Morton of Henryton (right to kill and carry away rabbits); *Webber v Lee* (1882) 9 QBD 315, CA (right to shoot and take part of the bag); *R v Surrey County Court Judge* [1910] 2 KB 410, DC (shooting). See also ANIMALS vol 2 (2008) PARA 715; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 10 et seq; EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 268.

3 See *Fitzgerald v Firbank* [1897] 2 Ch 96 (a licensee granted rights to fish and take away fish was able to maintain an action in damages against someone wrongfully interfering with his rights). See also *East Lothian Angling Association v Haddington Town Council* 1980 SLT 213, Ct of Sess (which suggests to the contrary); but see also *Hunter v Canary Wharf Ltd* [1996] 1 All ER 482, [1996] 2 WLR 348, CA (which considers the right of licensees to sue in nuisance).

4 *Mason v Clarke* [1955] AC 778, [1955] 1 All ER 914, HL.

5 See *Lowe v Adams* [1901] 2 Ch 598; *Walsh v Lonsdale* (1882) 21 ChD 9, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 76, 117.

6 *Cornish v Stubbs* (1870) LR 5 CP 334 at 339 per Willes J; *Mellor v Watkins* (1874) LR 9 QB 400. Out of the sporting season, three weeks' notice may be reasonable under a yearly licence: *Lowe v Adams* [1901] 2 Ch 598 (shooting). See further TORT vol 97 (2010) PARA 580.

7 *Kerrison v Smith* [1897] 2 QB 445 (licence to erect hoarding). See also *Whitby (Valuation Officer) v Warrington Anglers Association* [1985] JPL 873, 276 Estates Gazette 1169 (where waters were fished pursuant to a licence they were not severed from ownership of the land for rating purposes).

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## **812. Effect of grant.**

A grant by deed of the right of fishing is not a mere licence to fish, but is a grant of the right to fish and carry away the fish caught<sup>1</sup>, and the grantees have a right of action against anyone who wrongfully interferes with their right<sup>2</sup>, even in the absence of proof of special damage<sup>3</sup>. The grantee may exercise his right by his servants<sup>4</sup>.

A lessee of a fishery under a covenant not to sub-let nor assign the demised premises is not prevented from granting a limited licence to another person to fish if the covenant does not restrict him from sub-letting part of the premises<sup>5</sup>.

1 *Wickham v Hawker* (1840) 7 M & W 63; and see *Duchess of Norfolk v Wiseman* (1496) YB 12 Hen 7, fo 25, pl 5; 13 Hen 7, fo 13, pl 2.

2 *Fitzgerald v Firbank* [1897] 2 Ch 96, CA; *Nicholls v Ely Beet Sugar Factory* [1931] 2 Ch 84; *Rawson v Peters* (1972) 116 Sol Jo 884, CA (where a canoeist was held liable for interference with the fishing rights of an angling club although no one was actually fishing at the time of the passage of the canoe, since the canoe disturbed the fish and thereby interfered with the right to fish afterwards). See, however, para 792 ante. As to the right to compensation where flood prevention works caused a drop in the catch see *Welsh National Water Development Authority v Burgess* (1974) 28 P & CR 378, CA.

3 *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343, CA; *Rawson v Peters* (1972) 116 Sol Jo 884, CA.

4 *Wickham v Hawker* (1840) 7 M & W 63.

5 *Grove v Portal* [1902] 1 Ch 727 (grant of licence for two rods). See also *Church v Brown* (1808) 15 Ves 258 at 265 per Lord Eldon LC; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 484.

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## **D. PRESUMPTIONS OF LAW AS TO OWNERSHIP OF FISHERIES**

### **(A) FISHERIES IN TIDAL WATERS**



### 813. Presumptions.

There are two presumptions of law as to fisheries in tidal waters which, in the absence of definite evidence, may determine the ownership of such a fishery or at least throw the burden of proof onto the party claiming against the presumption:

- (1) that the soil subject to the ordinary flow and reflow of the tide up to the line of the medium high tide belongs to the Crown, and the right of fishery over it is common to all subjects of the realm<sup>1</sup>;
- (2) that proof of ownership of a several fishery raises a presumption against the Crown that the soil under the fishery is in the owner of the fishery<sup>2</sup>.

1 *Malcomson v O'Dea* (1863) 10 HL Cas 593; *A-G v Chambers* (1854) 4 De GM & G 206; *R v Smith* (1780) 2 Doug KB 441; and see Hale's de Jure Maris (Hargrave's Law Tracts 12, 13, 26).

2 *A-G v Emerson* [1891] AC 649, HL; *Hanbury v Jenkins* [1901] 2 Ch 401; and see *Hindson v Ashby* [1896] 2 Ch 1, CA; *Duke of Beaufort v John Aird & Co* (1904) 20 TLR 602; *Duke of Somerset v Fogwell* (1826) 5 B & C 875; *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732 (affd (1865) 6 B & S 570, Ex Ch); *Holford v Bailey* (1849) 13 QB 426; Co Litt 122a.

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### 814. Rebuttal of presumptions.

The presumptions of ownership<sup>1</sup> are capable of rebuttal, for proof of ownership of a fishery is only evidence of title to the soil, the weight of which must depend upon the other circumstances of the case, and these may show it to be of little importance<sup>2</sup>. In tidal waters there is generally no question of riparian ownership to midstream, because of the presumption of Crown ownership of the foreshore<sup>3</sup>.

Moreover, owing to the restraining influence of Magna Carta on the Crown's power to create several fisheries<sup>4</sup>, there is no presumption that the owner of the soil is therefore owner of the fishery, and a grant of the soil simpliciter in tidal waters will not operate to pass the right of fishing over it<sup>5</sup>.

1 See para 813 ante.

2 *A-G v Emerson* [1891] AC 649 at 655, HL, per Lord Herschell.

3 See BOUNDARIES vol 4(1) (2002 Reissue) para 922; CROWN PROPERTY vol 12(1) (Reissue) para 242.

4 See para 797 ante. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 868; CROWN PROPERTY vol 12(1) (Reissue) para 228.

5 *A-G v Emerson* [1891] AC 649 at 655, HL, per Lord Herschell; *Scrutton v Brown* (1825) 4 B & C 485 at 503 per Littledale J. See para 803 ante.

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### **815. Movement of tidal limits.**

When the sea suddenly breaks through a private person's land and tidal water is allowed to flow on it, the public right of fishing will not follow the tide, because the public right is dependent on and limited to the soil owned by the Crown, and the right of fishing will belong to the owner of the soil of the channel<sup>1</sup>. It is otherwise if a landowner intentionally and for his own purposes diverts the channel of a tidal river onto his own land, in which case the rights of the public will follow the water<sup>2</sup>.

<sup>1</sup> *Carlise Corpn v Graham* (1869) LR 4 Exch 361; and see Hale's de Jure Maris (Hargrave's Law Tracts 5, 11, 15, 16, 37).

<sup>2</sup> Hale's de Jure Maris (Hargrave's Law Tracts 10).

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### **(B) FISHERIES IN NON-TIDAL FLOWING WATERS**

#### **816. Presumption as to the riparian owner.**

There is a general presumption of law that the owner of land abutting on a non-tidal river is entitled to the soil of the river *usque ad medium filum aquae*<sup>1</sup>. In the absence of any express reference this presumption applies to all grants and leases of land, whatever the tenure, described as bounded by a river when made by a person who is in a position to part with the soil and fishery<sup>2</sup>.

<sup>1</sup> *Lord v Sydney City Comrs* (1859) 12 Moo PCC 473; *Micklethwait v Newlay Bridge Co* (1886) 33 ChD 133, CA; *Tilbury v Silva* (1890) 45 ChD 98 at 100, CA, per Kay J; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 401; *Maclaren v A-G for Quebec* [1914] AC 258 at 272-273, PC; *Thames Conservators v Kent* [1918] 2 KB 272 at 284, CA, per Warrington LJ; *Duke of Devonshire v Pattinson* (1887) 20 QBD 263, CA; *Lamb v Newbiggin* (1844) 1 Car & Kir 549; *Lord Chesterfield v Harris* [1908] 2 Ch 397, CA (on appeal sub nom *Harris v Earl of Chesterfield* [1911] AC 623, HL). For the meaning of '*usque ad medium filum aquae*' see para 824 post. For a more detailed consideration of riparian ownership and riparian rights see WATER AND WATERWAYS vol 100 (2009) PARA 81 et seq.

<sup>2</sup> *Micklethwait v Newlay Bridge Co* (1886) 33 ChD 133, CA. This presumption applies also to a riparian manor on its sub-infeudation: see *Lord Chesterfield v Harris* [1908] 2 Ch 397 at 417, 418, CA, per Buckley LJ; affd sub nom *Harris v Earl of Chesterfield* [1911] AC 623, HL.

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LAW AS TO OWNERSHIP OF FISHERIES/(B) Fisheries in Non-tidal Flowing Waters/817.  
Presumption as to the owner of the soil.

### **817. Presumption as to the owner of the soil.**

There is a presumption of law that the owner of the soil of a river is the owner of the fishery over it<sup>1</sup>.

<sup>1</sup> Hale's de Jure Maris (Hargrave's Law Tracts 5); *Carlisle Corpn v Graham* (1869) LR 4 Exch 361 at 368 per Kelly CB; *Hindson v Ashby* [1896] 2 Ch 1 at 9 per Lindley LJ; *Ecroyd v Coulthard* [1897] 2 Ch 554 (affd [1898] 2 Ch 358 at 373, CA); *A-G for British Columbia v A-G for Canada* [1914] AC 153 at 167, PC.

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Presumption as to the owner of the fishery.

### **818. Presumption as to the owner of the fishery.**

There is a presumption that the owner of a fishery is the owner of the soil<sup>1</sup>. This presumption will prevail over the presumption in favour of a riparian owner in the event of a conflict over the title to the soil between the owner of a fishery and the owner of land abutting on the water<sup>2</sup>.

<sup>1</sup> *Hanbury v Jenkins* [1901] 2 Ch 401; *A-G v Emerson* [1891] AC 649, HL; *Hindson v Ashby* [1896] 2 Ch 1 at 10, CA, per Lindley LJ; *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732; *Duke of Somerset v Fogwell* (1826) 5 B & C 875; *Holford v Bailey* (1849) 13 QB 426 at 444, Ex Ch, per Parke B. The omission of the word 'several' in the description of the fishery in ancient documents does not affect this presumption: *Duke of Beaufort v John Aird & Co* (1904) 20 TLR 602; *Partheriche v Mason* (1774) 2 Chit 658; and see *Smith v Kemp* (1693) 2 Salk 637.

<sup>2</sup> *Hindson v Ashby* [1896] 2 Ch 1 at 9, CA, per Lindley LJ.

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### **819. Rebuttal of presumptions.**

The presumption in favour of a riparian owner may be rebutted entirely if it is shown that the surrounding circumstances in relation to the property in question at the time of the conveyance were such as to negative the possibility of there having been any intention to part with the fishery usque ad medium filum aquae<sup>1</sup>. Circumstances subsequent to and not contemplated at the time of the grant, however, will not prevail against the presumption<sup>2</sup>.

When a claim is set up by a riparian owner as against the owner of a several fishery, the riparian owner must show that the exercise of the riparian right has been exclusive of the owner of the fishery, as proof that the owner of the fishery had also regularly fished there

would show that the riparian presumption did not arise, but that the riparian owner had only a common of fishery<sup>3</sup>, or was a tenant in common of the fishery or a trespasser<sup>4</sup>.

1 *Duke of Devonshire v Pattinson* (1887) 20 QBD 263, CA; *Browne v Marquis of Sligo* (1859) 10 I Ch R 1; *Lamb v Newbiggin* (1844) 1 Car & Kir 549. For the meaning of 'usque ad medium filum aquae' see para 824 post.

2 *Micklethwait v Newlay Bridge Co* (1886) 33 ChD 133, CA.

3 *Waterford Fishery District Conservators v Connolly* (1889) 24 ILT 7; *Hindson v Ashby* [1896] 2 Ch 1 at 9-11, CA, per Lindley LJ.

4 *Beauman v Kinsella* (1858) 8 ICLR 291 at 299-300; revsd on the facts (1859) 11 ICLR 249, Ex Ch.

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## (C) FISHERIES IN NON-TIDAL NON-FLOWING WATERS

### 820. Fisheries in canals, reservoirs etc.

In canals (including reservoirs and artificial watercourses) which are made over land, the right of fishing as an incident of the soil is prima facie in the owner of the soil, and he may let or otherwise deal with it<sup>1</sup>. If the canal or reservoir is made under an Act of Parliament there may be special provisions as to the fishery<sup>2</sup>. Where a river is canalised under a statute, the right of fishery remains in the original owners unless the Act contains provisions to the contrary<sup>3</sup>. In the case of canalised non-tidal rivers the public has no rights of fishery<sup>4</sup>.

1 Woolrych's Law of Waters (2nd Edn) 65. As to canals generally see WATER AND WATERWAYS vol 101 (2009) PARA 713 et seq.

2 *Grand Union Canal Co v Ashby* (1861) 6 H & N 394; *Snape v Dobbs* (1823) 8 Moore CP 23; *Staffordshire and Worcestershire Canal Navigation v Bradley* [1912] 1 Ch 91.

3 *Hargreaves v Diddams* (1875) LR 10 QB 582.

4 Hale's de Jure Maris (Hargrave's Law Tracts 9); *Hargreaves v Diddams* (1875) LR 10 QB 582; *Mussett v Burch* (1876) 35 LT 486, DC.

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### 821. Fisheries in ponds.

The owner of land in which a pond is situated is presumed to be also the owner of the pond and all that is in it<sup>1</sup>. The law as to the ownership of the soil and fishery in a pond is the same as the

law relating to fisheries in non-tidal running water<sup>2</sup>. Any man may construct on his own soil a fish pond or water in which fish are kept and nourished<sup>3</sup>, but he must not do so on a common if he thereby disturbs the commoners' rights<sup>4</sup>.

1 See Paterson's Fishery Laws (2nd Edn) 2; Woolrych's Law of Waters (2nd Edn) 121; *Clarke v Mercer* (1859) 1 F & F 492; *Greyes Case* (1594) Owen 20.

2 *Bristow v Cormican* (1878) 3 App Cas 641 at 666, HL, per Lord Blackburn. The law is doubtful where the water is bounded by land belonging to several owners: see paras 816-819 ante.

3 2 Co Inst 199.

4 *Reeve v Digby* (1638) Cro Car 495.

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## **822. Fisheries in lakes.**

The law as to the ownership of the soil and the right of fishing in large inland lakes is the same as applies to inland non-tidal waters, whatever the size of the water space may be, and the right of fishing belongs prima facie to the riparian owners *usque ad medium filum aquae*<sup>1</sup>. The public can have no right to fish there either by custom, user or prescription<sup>2</sup>. The Crown has no right *de jure* to the soil or fisheries of non-tidal lakes<sup>3</sup>.

Apart from any question of riparian ownership, exclusive fisheries, both several and common, do exist in the large lakes of the kingdom, but the extent of such fisheries depends on the facts of each case<sup>4</sup>.

1 See *Toome Eel Fishery (Northern Ireland) Ltd v Cardwell* [1966] NI 1, CA. See also para 821 note 1 ante. For the meaning of '*usque ad medium filum aquae*' see para 824 post.

2 *Johnston v O'Neill* [1911] AC 552, HL; and see also *Bristow v Cormican* (1878) 3 App Cas 641, HL; *R v Burrow* (1869) 34 JP 53.

3 *Bristow v Cormican* (1878) 3 App Cas 641 at 652, HL, per Lord Cairns LC, and at 667 per Lord Blackburn; *Johnston v O'Neill* [1911] AC 552 at 577, HL, per Lord Macnaghten; but see *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732 (affd (1865) B & S 570, Ex Ch).

4 See *Marshall v Ulleswater Steam Navigation Co* (1863) 3 B & S 732; affd (1865) 6 B & S 570, Ex Ch (corporeal several fishery). As to Coniston Water (fishery in gross) see *Shuttleworth v Le Fleming* (1865) 19 CBNS 687. As to Whittlesea Mere (common of fishery) see 2 Hundred Rolls 646. As to several fisheries see para 805 ante; and as to common of fishery see para 806 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/E. BOUNDARIES OF FISHERIES/823. Geographical extent.

## **E. BOUNDARIES OF FISHERIES**

### 823. Geographical extent.

In the absence of evidence to the contrary, the geographical extent of a fishery is determined in the case of a manorial fishery by the bounds of the manor<sup>1</sup>, and in the case of a fishery owned by a riparian owner, in respect of his riparian land, by the extent of the land abutting on the river.

<sup>1</sup> This statement of the law was approved in *Stephens v Snell* [1939] 3 All ER 622. As to the law relating to manors see CUSTOM AND USAGE vol 12(1) (Reissue) para 695 et seq.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/E. BOUNDARIES OF FISHERIES/824. Width in non-tidal waters.

### 824. Width in non-tidal waters.

The general rule for ascertaining the width of a fishery in a non-tidal river is that it extends usque ad medium filum aquae (that is, as far as the middle thread of the water)<sup>1</sup>, but it frequently happens in fact that the fishery extends over the whole breadth of the river<sup>2</sup>.

It has never been decided by the courts where exactly the medium filum aquae is to be taken in the case of non-tidal rivers, but it has been decided what is the extent of the bed of a river, and consequently what is the width of a several fishery in a river<sup>3</sup>. From this it seems to follow that the medium filum aquae (the common law boundary between fisheries belonging to riparian owners) is a line running down the middle of the bed of the river, the bed being that portion of the soil of the river which is always covered with water and that portion which is alternately covered or left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain the water at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring or the extreme droughts of the summer or autumn<sup>4</sup>. Where a river gradually and imperceptibly changes its course or its width, the boundary of a fishery in the river will follow such alterations<sup>5</sup>, notwithstanding the existence of bounds or marks by which the former boundary can be ascertained<sup>6</sup>. The ownership of the bed of the river or the right of the fishing over it does not give the right to fish beyond the middle line<sup>7</sup>.

<sup>1</sup> *Hindson v Ashby* [1896] 2 Ch 1, CA.

<sup>2</sup> *Smith v Andrews* [1891] 2 Ch 678; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA.

<sup>3</sup> *Hindson v Ashby* [1896] 2 Ch 1, CA.

<sup>4</sup> *State of Alabama v State of Georgia* 64 US 505 at 515 (1859), cited with approval by AL Smith LJ in *Hindson v Ashby* [1896] 2 Ch 1 at 25, CA. Where there is an island in the river the presumption is that each riparian owner owns the bed as far as the mid line between the island and his bank: *Great Torrington Commons Conservators v Moore Stevens* [1904] 1 Ch 347.

<sup>5</sup> Hale's de Jure Maris (Hargrave's Law Tracts 5); *Foster v Wright* (1878) 4 CPD 438; *Hindson v Ashby* [1896] 2 Ch 1, CA; *Ford v Lacy* (1861) 7 H & N 151; and see also BOUNDARIES vol 4(1) (2002 Reissue) para 924.

<sup>6</sup> *Secretary of State for India in Council v Foucar & Co Ltd* (1933) 50 TLR 241, PC; *A-G v M'Carthy* [1911] 2 IR 260; and see para 800 note 9 ante.

7 See *Lovett v Fairclough* (1990) 61 P & CR 385, where it was held to be a trespass to cast a fly line so that it landed on waters belonging to another. The river in question was the River Tweed, the south bank of which is in England and the north bank of which is in Scotland. However, see also the Scottish case of *Fotheringham v Kerr* (1984) 134 NLJ 567, 48 P & CR 173, HL (where an owner of a fishery located entirely in Scotland was entitled to wade to the middle line and fish as far as she could cast), cited in *Lovett v Fairclough* supra but not considered to constitute a binding precedent.

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### **825. Width in tidal waters.**

In tidal waters fisheries generally extend seawards to the mean low water mark of ordinary tides<sup>1</sup>, but in tidal rivers and estuaries, if a fishery is not limited to the foreshore but extends usque ad medium filum aquae, the boundary will be halfway between the high water marks of ordinary tides on either side of the river<sup>2</sup>.

1 *Stephens v Snell* (1954) Times, 5 June; *Loose v Castleton* (1978) 41 P & CR 19, CA.

2 *Thames Conservators v Smeed, Dean & Co* [1897] 2 QB 334, CA, overruling *Pearce v Bunting, ex p Pearce* [1896] 2 QB 360, DC. See, however, to the contrary, the argument in Stuart Moore's History and Law of Fisheries 118 et seq, based on a statement made in Hale's First Treatise on the Customs (Stuart Moore's History and Law of the Foreshore 354), but not repeated in Hale's de Jure Maris (Hargrave's Law Tracts), that the medium filum of a tidal river is the middle of the channel at low water. As to the meaning of 'usque ad medium filum aquae' see para 824 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/F. RIGHT TO USE BANKS/826. River banks.

### **F. RIGHT TO USE BANKS**

#### **826. River banks.**

The owner of a fishery has not of necessity any right to land or go along the banks for the purpose of taking fish, because the right of fishery may be carried on by boats or other means without interfering with the adjacent shore<sup>1</sup>.

1 Woolrych's Law of Waters (2nd Edn) 167; *Ipswich Inhabitants v Browne* (1581) Sav 11 at 14, Ex Ch. However, it is uncertain whether this is so when the fishery cannot be carried on except from the bank: see *Peter v Kendal* (1827) 6 B & C 703; *R v Ellis* (1813) 1 M & S 652 at 662 per Lord Ellenborough CJ.

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## 827. Acquisition of right to use banks.

A right to a fishing path or other use of the banks may be acquired by grant or prescription, and evidence of enjoyment for 20 years and upwards should be sufficient to warrant the judge presuming a grant<sup>1</sup>. Such a right may be prescribed for as appurtenant to a corporeal fishery and apparently to an incorporeal fishery, because, although they are incorporeal rights, they so agree in nature and quality as to be capable of union without incongruity<sup>2</sup>. The fact that a public highway abuts upon a river confers no right on anybody to fish from it<sup>3</sup>. When exercisable from or over manorial land, the right may be lost by the operation of an inclosure Act or by enfranchisement by the lord of the manor<sup>4</sup>. Where a fishery has been severed from the ownership of riparian land the court may imply a right of way over riparian land for the purposes of exercising the fishing rights<sup>5</sup>.

1 *Gray v Bond* (1821) 2 Brod & Bing 667; and see *R v Ellis* (1813) 1 M & S 652.

2 *Hanbury v Jenkins* [1901] 2 Ch 401 at 422 per Buckley J; but this is contrary to the view of Lord Coke: see Co Litt 121 b. See also *Shuttleworth v Le Fleming* (1865) 19 CBNS 687. As to corporeal and incorporeal fisheries see para 789 ante.

3 See *Harrison v Duke of Rutland* [1893] 1 QB 142, CA (interference with shooting rights).

4 *Ecroyd v Coulthard* [1897] 2 Ch 554 (affd [1898] 2 Ch 358, CA); *Tilbury v Silva* (1890) 45 ChD 98, CA. As to manorial fishing rights see CUSTOM AND USAGE vol 12(1) (Reissue) paras 720-721. For the saving of such rights on the general enfranchisement of copyholds see REAL PROPERTY vol 39(2) (Reissue) para 35.

5 See *Rice v Dodds* (1969) 213 Estates Gazette 759.

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## 828. Towpaths.

The public has no right to fish from the towpath of a canal or other artificial watercourse. Whether the owner of the fishery in these waters may fish from the towpath will depend on the construction of the Act of Parliament under which it is made, or on the terms on which the soil under the waters was conveyed to the proprietors of the canal or watercourse<sup>1</sup>.

1 *Staffordshire and Worcestershire Canal Navigation v Bradley* [1912] 1 Ch 91 at 100 per Eve J; and see para 820 ante.

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## G. EVIDENCE OF TITLE

### (A) DOCUMENTARY EVIDENCE



## 829. Grant and possession.

Title to a fishery may be shown by the production of the grant<sup>1</sup> with possession under it or by proving possession for sufficient time to raise the presumption of a lost grant<sup>2</sup> or to give a title under the Limitation Act 1980<sup>3</sup>. In many cases the grant of the fishery is an ancient deed, and when a question arises as to what passes by the grant it can be explained by contemporaneous user<sup>4</sup>. Documents evidencing the grant of a fishery may include old leases<sup>5</sup>, old licences and court rolls<sup>6</sup>, rent receipts<sup>7</sup>, proceedings and court decrees<sup>8</sup>, and land tax assessments<sup>9</sup>. The words 'fishery' or 'several fishery' are sufficient to pass the right to a fishery<sup>10</sup>, and if the grantor had the soil under the fishery the soil will pass by such a grant<sup>11</sup>, because, in the absence of evidence to the contrary, the owner of a fishery is presumed to be the owner of the soil<sup>12</sup>.

A grant of weirs is a grant not only of a mere right of fishing, but of a corporeal hereditament consisting not only of the soil in which particular weirs are constructed, but of the soil over which the river flows and upon which there is a right to construct weirs for the purpose of taking fish<sup>13</sup>, and such a grant may pass a continuous fishery<sup>14</sup>.

1 As to documentary evidence in general see CIVIL PROCEDURE vol 11 (2009) PARA 864 et seq.

2 As to prescription under the doctrine of a lost grant see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 278; and as to prescription generally see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 74 et seq.

3 An incorporeal fishery is not within the definition of 'land' in the Limitation Act 1980 s 38 (as amended), so that mere possession of an incorporeal fishery for any length of time is insufficient to found a title: see LIMITATION PERIODS.

4 *Duke of Beaufort v Swansea Corpn* (1849) 3 Exch 413; *Duke of Devonshire v Pattinson* (1887) 20 QBD 263, CA. See DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 207.

5 *Malcolmson v O'Dea* (1863) 10 HL Cas 593.

6 *A-G v Emerson* [1891] AC 649.

7 *Percival v Nanson* (1851) 7 Exch 1.

8 *Neill v Duke of Devonshire* (1882) 8 App Cas 135, *Johnston v O'Neill* [1911] AC 552.

9 *Doe d Strode v Seaton* (1834) 2 Ad & El 171.

10 *London Alderman v Hasting* (1657) 2 Sid 8; cf *Throckmerton v Tracy* (1555) 1 Plowd 145 at 161; *Neill v Duke of Devonshire* (1882) 8 App Cas 135; *Hanbury v Jenkins* [1901] 2 Ch 401.

11 *Hanbury v Jenkins* [1901] 2 Ch 401.

12 *A-G v Emerson* [1891] AC 649, HL; *Hindson v Ashby* [1896] 2 Ch 1, at 10, CA, per Lindley LJ; *Partheriche v Mason* (1774) 2 Chit 658. See also para 818 ante.

13 *Hanbury v Jenkins* [1901] 2 Ch 401.

14 *Gabbett v Clancy* (1845) 8 ILR 299.

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## 830. Construction of Crown grants.

When the grant is made by the Crown it is to be construed strictly against the grantee unless it is an Elizabethan grant<sup>1</sup>, and it passes nothing by implication<sup>2</sup>, but a grant by the Crown of a definite stretch of a several fishery may still be a good grant of a several fishery in part of the river so included, though as to the other part the Crown had no several fishery to give<sup>3</sup>.

1 See 18 Eliz 1 c 2 (Crown Lands) (1575); 43 Eliz 1 c 1 (Confirmation of Certain Grants) (1601) (both repealed), which provide for construction beneficial to the grantee.

2 *Royal Fishery of Banne Case* (1610) Dav Ir 55; and see CROWN PROPERTY vol 12(1) (Reissue) para 253.

3 *Hanbury v Jenkins* [1901] 2 Ch 401; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 143, HL, per Lord Selborne LC. As to several fisheries see para 805 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/G. EVIDENCE OF TITLE/(A) Documentary Evidence/831. Need to prove date of grant.

### **831. Need to prove date of grant.**

In the case of non-tidal waters it is not necessary, although often very desirable, to trace the title to the fishery far back and to prove that it is an ancient one<sup>1</sup>, but where the fishery is in tidal waters and the grant is not forthcoming, it is imperative to show evidence of its existence before Magna Carta<sup>2</sup>, or such evidence as will raise a presumption that it was in existence as a separate hereditament before then. What evidence is necessary to establish this must depend greatly on the particular facts of the case, but the evidence must be such as to establish that the fishery has been dealt with as of right, as a distinct and separate property, and that there is nothing to show that its origin is modern<sup>3</sup>. Evidence of possession during living memory has been held sufficient to sustain a title founded on ancient documents<sup>4</sup>, and when the fishery is granted by a Crown patent and is followed by sufficient user, it is sufficient evidence that the fishery was created before Magna Carta<sup>5</sup>.

1 *Smith v Andrews* [1891] 2 Ch 678; and cf *Harris v Earl of Chesterfield* [1911] AC 623, HL, where evidence given of long exercise of a right unknown to the law was of no avail; but see *Meacher v Blair-Oliphant* 1913 SC 417, Ct of Sess.

2 *A-G for British Columbia v A-G for Canada* [1914] AC 153, PC; *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139; *Stephens v Snell* [1939] 3 All ER 622 (for subsequent proceedings see (1954) Times, 5 June); and see para 797 ante. See also CROWN PROPERTY vol 12(1) (Reissue) para 253.

3 *Malcomson v O'Dea* (1863) 10 HL Cas 593; *Edgar v English Fisheries Special Comrs* (1870) 23 LT 732.

4 *Ashworth v Browne* (1860) 10 I Ch R 421.

5 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 180, HL, per Lord Blackburn; and see *O'Neill v Allen* (1859) 9 ICLR 132; *Tighe v Sinnott* [1897] 1 IR 140. In *R v Downing* (1870) 23 LT 398, 50 years' use was sufficient; and in *Halse v Alder* (1874) 38 JP 407, 20 years' use was sufficient.

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## (B) EVIDENCE OF USER

### 832. Evidence of possession.

Mere possession of a profit à prendre is sufficient to support a claim for trespass against a wrongdoer<sup>1</sup>, but a perfect documentary title is not sufficient to maintain an action against a trespasser or a person claiming an adverse right when the title is in issue: in those circumstances it is necessary to give evidence of possession under the documentary title<sup>2</sup>. What amount of possession is necessary must vary according to circumstances; and what may demonstrate it in one case may be quite inadequate in another. The character and value of the property, the suitable and natural mode of using it, and the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests, are all to be taken into account in determining the sufficiency of possession<sup>3</sup>.

1 *Mason v Clarke* [1955] 1 All ER 914 at 920, HL, per Viscount Simonds; *Bristow v Cormican* (1878) 3 App Cas 641 HL.

2 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 143, HL, per Lord Selborne LC; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA; *Johnston v O'Neill* [1911] AC 552, HL (see particularly the dissenting speech of Earl Loreburn LC).

3 *Lord Advocate v Lord Lovat* (1880) 5 App Cas 273 at 288, HL, per Lord O'Hagan; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 165, HL, per Lord O'Hagan.

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### 833. Acts of ownership.

In proving possession it is not necessary to show acts of ownership over every part of the fishery when it is a connected and unbroken entity, for the owner of a fishery cannot be expected to prove proceedings indicative of his ownership of every part of the fishery, and, if he shows exercise of dominion over certain parts in accordance with a claim of title to the whole, such evidence may be decisive as to his ownership of the whole fishery, provided there is such a common character of locality between those parts and the spot in question as would raise a reasonable presumption in the court's mind that the place in question belonged to the claimant if the other parts did<sup>1</sup>. Where, however, the fishery is a connected and unbroken entity, but the titles to parts of it are distinct, acts of ownership in one part are not evidence of ownership of the whole<sup>2</sup>.

1 *Jones v Williams* (1837) 2 M & W 326 at 331 per Parke B; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 166, HL, per Lord O'Hagan; *Lord Advocate v Lord Lovat* (1880) 5 App Cas 273 at 289, HL, per Lord O'Hagan; and see *Lord Advocate v Young, North British Ry Co v Young* (1887) 12 App Cas 544, HL (prescriptive right to foreshore in Scotland).

2 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 151, HL, per Lord Selborne LC; but see at 166 per Lord O'Hagan. See also *Bristow v Cromican* (1878) 3 App Cas 641, HL; *Johnston v O'Neill* [1911] AC 552, HL.

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### **834. Nature of evidence of possession.**

Ownership may be proved by old settlements<sup>1</sup>, leases and counterpart leases<sup>2</sup>. Evidence of payment of rent under such leases amounts to a clear and distinct evidence of possession<sup>3</sup>. Demises by copy of court roll<sup>4</sup>, licences<sup>5</sup> and possessory suits<sup>6</sup> are also evidence. Actions against trespassers, even though judgment went in default of pleading<sup>7</sup>, convictions<sup>8</sup>, and accounts of bailiffs, receivers, and stewards showing rent due<sup>9</sup> or the receipt of rent or profit from the fishery<sup>10</sup>, and surveys<sup>11</sup>, are admissible as evidence to prove possession. Tithe assessments, tithe maps, tithe awards and the payment of tithe on fisheries are evidence of possession and in tidal waters go to show that a fishery is not vested in the Crown but is within the parish<sup>12</sup>.

Land tax assessment books may be evidence of ownership of a fishery<sup>13</sup>, as may poor rate assessments<sup>14</sup>. Generally, rating and revenue books are documents of a public nature, and if brought from proper custody are evidence of the facts stated in them, if such facts are within the scope of the object for which the books were kept<sup>15</sup>. Many other documents may be proof of possession on the general principles of evidence as to possession<sup>16</sup>. In the case of fisheries in tidal waters, evidence of reputation is admissible, because the public interest is involved<sup>17</sup>.

1 *Johnston v O'Neill* [1911] AC 552 at 569, HL, per Earl Halsbury.

2 *Rogers v Allen* (1808) 1 Camp 309 at 311 per Heath J; *Musgrave v Inclosure Comrs* (1874) LR 9 QB 162; *Johnston v O'Neill* [1911] AC 552, HL.

3 *Bristow v Cormican* (1878) 3 App Cas 641; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 145, HL, per Lord Selborne LC; *Gabbett v Clancy* (1845) 8 ILR 299; *Greenbank v Sanderson* (1884) 49 JP 40, DC.

4 *A-G v Emerson* [1891] AC 649, HL.

5 *Rogers v Allen* (1808) 1 Camp 309; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 155, HL, per Lord Selborne LC; *Mannall v Fisher* (1859) 5 CBNS 856; and see *Mills v Colchester Corpn* (1868) LR 3 CP 575, Ex Ch.

6 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 145-147, HL, per Lord Selborne LC, and at 162-165, 167, per Lord O'Hagan.

7 *Neill v Duke of Devonshire* (1882) 8 App Cas 135, HL (see particularly at 150 per Lord Selborne LC); *Johnston v O'Neill* [1911] AC 552, HL; *Malcomson v O'Dea* (1863) 10 HL Cas 593. As to the necessity of pleading estoppel see further *Vooght v Winch* (1819) 2 B & Ald 662; and ESTOPPEL vol 16(2) (Reissue) para 963.

8 *Neill v Duke of Devonshire* (1882) 8 App Cas 135, HL; *Johnston v O'Neill* [1911] AC 552, HL; *R v Burrow* (1869) 34 JP 53.

9 *Malcomson v O'Dea* (1863) 10 HL Cas 593.

10 *A-G v Emerson* [1891] AC 649, HL; *Exeter Corpn v Warren* (1844) 5 QB 773; *Percival v Nanson* (1851) 7 Exch 1; *Doe d Strode v Seaton* (1834) 2 Ad & El 171.

11 *Edgar v English Fisheries Special Comrs* (1870) 23 LT 732.

12 *Palmer v Andrews* (1902) cited in Stuart Moore's History and Law of Fisheries 147; but see *Wilberforce v Hearfield* (1877) 5 ChD 709 (tithe commutation map is not admissible as evidence of boundaries where title is in dispute).

13 *Doe d Strode v Seaton* (1834) 2 Ad & El 171; *Palmer v Andrews* (1902) cited in Stuart Moore's History and Law of Fisheries 147; but see *Doe d Stansbury v Arkwright* (1833) 2 Ad & El 182n.

14 *Smith v Andrews* [1891] 2 Ch 678.

15 See the Civil Evidence Act 1995 s 9; and CIVIL PROCEDURE vol 11 (2009) PARA 817.

16 See further CIVIL PROCEDURE.

17 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 186, HL, per Lord Blackburn. Such evidence will now be admissible under the Civil Evidence Act 1995: see CIVIL PROCEDURE vol 11 (2009) PARA 808 et seq.

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### 835. Ownership of soil.

Evidence of ownership of eyots and islands in a river raises a presumption of ownership of the soil of the river<sup>1</sup>. Fishing by means of a weir or similar fixed engine is evidence of possession of some several fishery in or near those places<sup>2</sup>. Weirs are evidence of ownership of a corporeal fishery<sup>3</sup>. The existence of a weir in navigable rivers at the time of the passing of the Salmon Fishery Act 1861<sup>4</sup> is strong evidence of the antiquity of the fishery, because the statutes relating to weirs<sup>5</sup> from Edward III's reign and onwards made weirs, which were not in existence in the time of Edward I, illegal. Cutting weeds, building piers, taking sand and gravel, fencing off drinking places for cattle, and protecting the banks by stakes, if done by the owner of the fishery, are evidence of the ownership of the soil<sup>6</sup>, but if done by a riparian owner may be referred to an absence of objection by the owner of the bed of the river to an act which did him no harm and which was reasonably convenient or necessary for the protection or enjoyment of the property of the riparian owner<sup>7</sup>.

1 *Great Torrington Commons Conservators v Moore Stevens* [1904] 1 Ch 347. Accordingly, the medium filum rule (see para 824 ante) will apply to one half of the width of the stream on either side of the island or eyot; but see the Scottish case of *Menzies v Marquis of Breadalbane* (1901) 4 F 55, Ct of Sess, which suggested that if the island divides the river into a main and subsidiary channel there will be one medium filum half way across the main channel.

2 *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 143, HL, per Lord Selborne LC; *Lord Advocate v Lord Lovat* (1880) 5 App Cas 273. This is so even if the engine is illegal: *Lord Advocate v Lord Lovat* supra at 291 per Lord O'Hagan. As to several fisheries see para 805 ante.

3 *St Benedict, Hulm (Abbot) Case* (1317) Hale's de Jure Maris (Hargrave's Law Tracts 20); *Hanbury v Jenkins* [1901] 2 Ch 401. For the meaning of 'fishing weir' in the Salmon and Freshwater Fisheries Act 1975 see para 848 note 7 post. For other meanings of 'weir' see *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 144, HL, per Lord Selborne, LC; *Malcomson v O'Dea* (1863) 10 HL Cas 593; *A-G v Emerson* [1891] AC 649, HL; *Maw v Holloway* [1914] 3 KB 594 at 602. As to corporeal and incorporeal fisheries see para 789 ante.

4 The Salmon and Fishery Act 1861 s 12 (repealed), prohibited the use of fishing weirs and fishing mill dams which were not lawfully in use at that date.

5 25 Edw 3 stat 3 (1350-1) c 4; 45 Edw 3 (1370-1) c 3; 4 Hen 4 c 11 (1402); 2 Hen 6 c 19 (1423) (all now repealed as obsolete). See *Williams v Wilcox* (1838) 3 Nev & PKB 606. The prohibitions apply only to navigable rivers: *Leconfield v Lonsdale* (1870) LR 5 CP 657.

6 *A-G v Emerson* [1891] AC 649 HL; and see *R v Old Airedale Inhabitants* (1786) 1 Term Rep 358.

7 *Hanbury v Jenkins* [1901] 2 Ch 401 at 421 per Buckley J.

**UPDATE****835 Ownership of soil**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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**836. Public user.**

In tidal and in non-tidal several fisheries user by the public may be evidence that the possession of the fishery is not in the person asserting a paper title to it<sup>1</sup>.

<sup>1</sup> *Smith v Andrews* [1891] 2 Ch 678; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA. As to several fisheries see para 805 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/H. DISTURBANCE OF FISHERIES/837. Rights and duties of fishery owners.

**H. DISTURBANCE OF FISHERIES****837. Rights and duties of fishery owners.**

The owner of a fishery has the right to a free passage for fish to his fishery and a right to catch every fish finding its way there which he can take by art or industry<sup>1</sup>, but he must not obstruct the passage of fish up or down the river in a manner not essentially necessary to the exercise of the right of catching fish<sup>2</sup>, nor do anything which may cause the water on his land to inundate his neighbour's fishery<sup>3</sup>.

The lessee of a fishery can maintain an action for an injunction to restrain a disturbance of his fishery even when the acts done are offences for which penalties are prescribed by statute and even without proof of damage, unless the statute expressly excludes that remedy<sup>4</sup>.

<sup>1</sup> *Hamilton v Marquis of Donegal* (1795) 3 Ridg Parl Rep 267; *Barker v Faulkner* (1898) 79 LT 24.

<sup>2</sup> *Hamilton v Marquis of Donegal* (1795) 3 Ridg Parl Rep 267; *Weld v Hornby* (1806) 7 East 195. See also *Barker v Faulkner* (1898) 79 LT 24; *Leconfield v Lonsdale* (1870) LR 5 CP 657 at 725.

<sup>3</sup> *Courtney v Collet* (1697) 1 Ld Raym 272 (removing a dam).

<sup>4</sup> *Fraser v Fear* (1912) 107 LT 423, CA (on appeal (1914) 137 LT Jo 314, HL), as explained in *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343, CA; and see *Stevens v Chown* [1901] 1 Ch 894. See also *Rawson v Peters*

(1972) 116 Sol Jo 884, CA (injunction and nominal damages); *Will's Trustees v Caringorm Canoeing and Sailing School Ltd* 1976 SLT 162; *Tennant v Clancy* [1987] IR 15, Ir HC. As to the pollution of fisheries see para 917 et seq post.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/H. DISTURBANCE OF FISHERIES/838. Rights and duties of riparian owners.

### **838. Rights and duties of riparian owners.**

A riparian owner who is not the owner of the fishery on the other side of his land must not make erections on the bed of the river which may damage the fishery<sup>1</sup>; but he may fence in drinking places for his cattle and do works to the banks reasonably necessary for the protection and enjoyment of his land<sup>2</sup>. Where the soil and the fishery are in different ownership the owner of each must act reasonably, having due regard to the interest of the other, and will be liable for damage caused by extraordinary, non-natural or unreasonable action<sup>3</sup>.

1 *Bridges v Highton* (1865) 11 LT 653.

2 *Hanbury v Jenkins* [1901] 2 Ch 401.

3 See *Peech v Best* [1931] 1 KB 1 at 14, CA, per Scrutton LJ; *Mason v Clarke* [1955] AC 778 at 796, [1955] 1 All ER 914, at 921, HL, per Viscount Simonds.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/I. PROPERTY IN FISH/839. Property in living fish.

## **I. PROPERTY IN FISH**

### **839. Property in living fish.**

There is no absolute property in living fish, other than oysters, mussels, cockles and clams on certain land<sup>1</sup>, for in their natural state they are wild animals, and are not goods and chattels; there may, however, be a qualified property in them as in other wild animals<sup>2</sup>. Wild creatures, tamed or untamed, are regarded as property, but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession<sup>3</sup>.

1 As to the ownership of shellfish and oysters, and the protection of shellfish fisheries see para 1037 post. As to the ownership of whales see paras 1071-1072 post.

2 See the Theft Act 1968 s 4(4); and the text and note 3 infra. See further ANIMALS vol 2 (2008) PARA 710 et seq. See also *Child v Greenhill* (1639) Cro Car 553; *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343 at 347, CA, per Lord Wright MR; *R v Steer* (1704) 6 Mod Rep 183. There is not sufficient property in fish nearly inclosed in a net to maintain an action of trespass against a person who prevents their capture (although some other action might lie): *Young v Hichens* (1844) 6 QB 606. See also *Greyes Case* (1594) Owen 20, where it was held to be an offence to steal fish from a private pond. This may give some support for the case that fish introduced to a confined pond might remain the property of the party that introduced them. However, it is possible to displace

the common law rule by agreement between the parties (eg allowing a lessee the right to remove fish introduced by him to a fishing lake at the end of the term).

3 Theft Act 1968 s 4(4); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 288.

## **UPDATE**

### **839 Property in living fish**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/I. PROPERTY IN FISH/840. Property in dead fish.

### **840. Property in dead fish.**

On the analogy of the law relating to wild animals, dead fish are the subject of theft, for when found and killed they become the absolute property of the owner of the fishery or of the person in whose possession they rightfully are<sup>1</sup>. However, in the case of capture and killing by trespassers they are not the subject of theft<sup>2</sup>.

1 *R v Mallison* (1902) 86 LT 600, CCR (fish caught in the high seas are the property of the owner of the fishing vessel which took them). See further para 839 ante.

2 See ANIMALS vol 2 (2008) PARA 715. Where any person is convicted of an offence against the Salmon and Freshwater Fisheries Act 1975, the convicting court may order the forfeiture of any fish illegally taken by him or in his possession at the time of the offence and may order the fish so forfeited to be disposed of as the court thinks fit: s 37, Sch 4 Pt II para 5. Fish seized under the Act may be sold by the person who seized it, and the proceeds of sale are liable to forfeiture in the same way as the fish: see Sch 4 Pt II para 8. See further para 924 post.

## **UPDATE**

### **840 Property in dead fish**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/I. PROPERTY IN FISH/841. Taking and destroying fish.

### **841. Taking and destroying fish.**



Any person who unlawfully takes<sup>1</sup> or destroys, or attempts to take or destroy, any fish<sup>2</sup> in water<sup>3</sup> which is private property, or in which there is any private right of fishery, is guilty of an offence and liable on summary conviction to a fine<sup>4</sup>. This does not apply to taking or destroying fish by angling in the daytime<sup>5</sup>, but a person who by angling in the daytime unlawfully takes or destroys, or attempts to take or destroy, any fish in water which is private property or in which there is any private right of fishery is guilty of an offence<sup>6</sup>.

The court by which the offender is convicted may order the forfeiture of anything which, at the time of the offence, he had with him for taking or destroying fish<sup>7</sup>.

The absence of mens rea is no defence to a prosecution for the above offences<sup>8</sup>.

Certain offences under Scottish legislation relating to poaching apply in certain places on the English side of the border<sup>9</sup>.

Certain offences, under legislation relating to criminal damage, of destroying or damaging property<sup>10</sup>, or threatening to destroy or damage property<sup>11</sup>, or possessing anything with intent to destroy or damage property<sup>12</sup>, apply in relation to wild creatures which have been tamed or are ordinarily kept in captivity, and to any other wild creatures or their carcasses if they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession<sup>13</sup>.

1 'Take' means catch: *Wells v Hardy* [1964] 2 QB 447, [1964] 1 All ER 953, DC (angler taking solely for sport with intention of returning alive every fish caught was guilty of offence of 'taking' under the Larceny Act 1861 s 24 (now repealed). See also *R v Glover* (1814) Russ & Ry 269, CCR; *Farey v Welch* [1929] 1 KB 388, DC; *Hudson v MacRae* (1863) 4 B & S 585. As to the meaning of 'unlawfully' see *R v Stimpson* (1863) 4 B & S 301; *Halse v Alder* (1874) 38 JP 407; *Smith v Andrews* [1891] 2 Ch 678.

2 The term 'fish' is used here in its ordinary popular sense and includes shellfish: *Caygill v Thwaite* (1885) 49 JP 614 (freshwater crayfish); *Leavett v Clark* [1915] 3 KB 9, DC (winkles). See also *Maldon Corp v Woolvet* (1840) 12 Ad & El 13 (oysters); *Woodhouse v Etheridge* (1871) LR 6 CP 570 (eels).

3 'Water' includes tidal and non-tidal water (*Paley v Birch*) (1867) 8 B & S 336, and may include puddles on a mudflat (*Leavett v Clark* [1915] 3 KB 9, DC).

4 Theft Act 1968 Sch 1 para 2(1). The maximum penalty is a fine at level 3 on the standard scale or three months' imprisonment or both: Theft Act 1968 Sch 1 para 2(1) (amended by the Criminal Justice Act 1982 ss 35, 38, 46). As from a day to be appointed, the maximum penalty will be simply a fine not exceeding level 3 on the standard scale: see the Theft Act 1968 Sch 1 para 2(1) (as so amended; prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law no such day had been appointed. 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

5 le between one hour before sunrise and one hour after sunset: Theft Act 1968 Sch 1 para 2(2). By 'sunrise' and 'sunset' is meant the actual moment at which the sun rises or sets at the place in question: *Gordon v Cann* (1899) 68 LJQB 434, DC; and see *Curtis v March* (1858) 3 H & N 866; *MacKinnon v Nicolson* 1916 JC 6; and TIME vol 97 (2010) PARA 316.

6 Theft Act 1968 Sch 1 para 2(2). The offence is punishable on summary conviction by a fine not exceeding level 1 on the standard scale: Sch 1 para 2(2) (amended by the Criminal Justice Act 1982 ss 37, 38, 46).

7 Theft Act 1968 Sch 1 para 2(3).

8 *Hudson v MacRae* (1863) 4 B & S 585; *Horton v Gwynne* [1921] 2 KB 661, CCA; *Farey v Welch* [1929] 1 KB 388, DC; and see *Cotterill v Penn* [1936] 1 KB 53, DC; *Wells v Hardy* [1964] 2 QB 447, [1964] 1 All ER 953, DC.

9 See *Ryan v Ross* [1963] 2 QB 151, [1963] 1 All ER 853, DC. See further para 845 post.

10 See the Criminal Damage Act 1971 s 1(1); and ANIMALS vol 2 (2008) PARA 740; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 334, 336.

11 See *ibid* s 2; and ANIMALS vol 2 (2008) PARA 741; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 337.

12 See *ibid* s 3; and ANIMALS vol 2 (2008) PARA 740; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 338.

13 See *ibid* s 10(1)(a); and ANIMALS vol 2 (2008) PARA 740; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 339-340. Cf the Theft Act 1968 s 4(4); and para 839 ante. As to the property in wild animals generally see ANIMALS vol 2 (2008) PARAS 710-716; and cf paras 839-840 ante.

## UPDATE

### 841 Taking and destroying fish

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 4-7--Theft Act 1968 Sch 1 para 2(1) substituted, Sch 1 para 2(2) repealed, Sch 1 para 2(3) amended: Marine and Coastal Access Act 2009 s 228, Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/I. PROPERTY IN FISH/842. Civil proceedings.

### 842. Civil proceedings.

Instead of instituting criminal proceedings for stealing fish<sup>1</sup>, the owner may take civil proceedings for trespass, and in such proceedings the defendant cannot set up a *jus tertii* against a possessory title<sup>2</sup>. Damages are limited to such as are the natural and probable consequence of the wrongful acts, and are not in any way extended beyond that limit because the acts were illegal *per se*<sup>3</sup>.

1 *ie* proceedings under the Theft Act 1968 s 32(1), Sch 1 para 2: see para 841 ante.

2 *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410, PC; *The Winkfield* [1902] P 42, CA; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802. As to trespass to goods see further TORT vol 45(2) (Reissue) PARA 659 et seq. The same rule applies also to a nuisance claim: *Nicholls v Ely Beet Sugar Factory* [1931] 2 Ch 84, explaining *Fitzgerald v Firkbank* [1897] 2 Ch 96, CA. As to nuisance generally see NUISANCE.

3 *Marquis of Granby v Bakewell UDC* (1923) 87 JP 105.

## UPDATE

### 842 Civil proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(1) PUBLIC AND PRIVATE FISHERIES/(iii) Private Fisheries/J. LIABILITY TO VALUE ADDED TAX/843. Value added tax on fisheries and fish.

## ***J. LIABILITY TO VALUE ADDED TAX***

### **843. Value added tax on fisheries and fish.**

A supply of fish, whether living or dead, is in general a taxable supply for the purposes of value added tax<sup>1</sup>. However, where there is a supply of living fish which is of a kind generally used as, or yielding or producing, food for human consumption, the supply is zero-rated<sup>2</sup>. A supply of dead fish is zero-rated if it constitutes food of a kind used for human consumption or animal feeding stuffs<sup>3</sup>.

The granting, assignment or surrender of a major interest in land is treated as a supply of goods<sup>4</sup>. Although in most cases such a supply is an exempt supply, the granting of any right to take fish is an exception<sup>5</sup>. Where there is a grant of a right to take fish by outright grant or lease, then this is treated as a supply for the purposes of value added tax, and does not benefit from the exemption applicable to the disposition of land<sup>6</sup>.

1 'Taxable supply' means any supply of goods or services in the United Kingdom other than an exempt supply: Value Added Tax Act 1994 ss 4(2), 96(1). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 3. Value added tax is charged where the supply is a taxable supply and the goods or services are supplied by a taxable person in the course of a business carried on by him: s 4(1). See further VALUE ADDED TAX vol 49(1) (2005 Reissue) para 18. Value added tax is also charged on the importation of goods into the United Kingdom: see VALUE ADDED TAX vol 49(1) (2005 Reissue) para 49. As to restrictions on the importation of fish see ANIMALS vol 2 (2008) PARA 1081.

2 See the Value Added Tax Act 1994 s 30(1), (2), Sch 8 Pt II Group 1 Item 4. 'Animal' includes bird, fish, crustacean and mollusc: Sch 8 Pt II Group 1 Note (2). Pet foods, canned, packaged or prepared, are, however, excepted from zero-rating: see Sch 8 Pt II Group 1 Item 6; and VALUE ADDED TAX vol 49(1) (2005 Reissue) para 175.

3 Ibid Sch 8 Pt II Group 1 Items 1, 2. See VALUE ADDED TAX vol 49(1) (2005 Reissue) para 175.

4 Ibid Sch 4 para 4. For the meaning of 'major interest' in relation to land see s 96(1); and VALUE ADDED TAX vol 49(1) (2005 Reissue) para 12.

5 See ibid s 31, Sch 9 Pt II Group 1 Item 1(c).

6 See HMRC VAT Notice 742 (Land and Property: March 2002) para 6.4.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(i) Introduction/844. History of regulation of salmon and freshwater fisheries.

## (2) SALMON AND FRESHWATER FISHERIES

### (i) Introduction

#### 844. History of regulation of salmon and freshwater fisheries.

Salmon, trout, eel and freshwater fisheries have been the subject of numerous statutes, both public and local, for their regulation from the time of Magna Carta onwards. One of the aims of the legislature from the first was to remove obstructions to the passage of fish and vessels up the rivers<sup>1</sup>.

The Salmon Fishery Act 1861 forbade the use of fixed engines which were not lawfully exercised at the time of the passing of that Act, and required that fishing weirs and fishing mill dams then lawfully in use were to be so constructed as to allow of the passage of fish. In consequence of these provisions it became necessary to ascertain what fishing machines were lawful, and by the Salmon Fishery Act 1865 a commission was appointed to inquire into the legality of all fixed engines, fishing weirs and fishing mill dams in use within the limits of those Acts<sup>2</sup>.

The commissioners thus appointed were required to give certificates<sup>3</sup> for fixed engines, which are conclusive evidence as to their legality; and, with regard to fishing weirs and fishing mill dams and fixed engines, their duty was to remove or render incapable of catching fish such of these as they found to be illegal; but they appear to have had no express power to grant certificates as to the legality of fishing weirs and fishing mill dams<sup>4</sup>.

Under the Salmon Fishery Act 1865, salmon fishery districts were created and regulated by boards of conservators. Similar boards were set up with respect to trout and char<sup>5</sup> and with respect to coarse fish<sup>6</sup>.

1 By Magna Carta it was provided that 'all weirs from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the sea-coasts': 25 Edw 1 (Magna Carta) (1297) c 23.

2 See the Salmon Fishery Act 1865 ss 39-55 (repealed).

3 Any summons, order, warrant or other instrument purporting to be sealed with the commissioners' seal and signed, in the case of a warrant for the removal of any fishing weir or fixed engine or for the alteration of any fishing mill dam, by any two commissioners and, in the case of any other instrument, by any person delegated by them is receivable in evidence without further proof: Salmon and Freshwater Fisheries Act 1923 s 80 (repealed). The repeal of that provision by the Salmon and Freshwater Fisheries Act 1975 (see s 42(1), Sch 5) does not affect the admissibility in evidence of any instrument made under the Salmon Fishery Act 1865: Salmon and Freshwater Fisheries Act 1975 s 42(5).

4 See, however, *Duke of Devonshire v Drohan* [1900] 2 IR 161, a case under the Salmon Fishery (Ireland) Act 1863 s 9, where a certificate given by the special commissioners in 1866 as to the legality of a weir was held to be conclusive against all the world as to such legality.

5 See the Freshwater Fisheries Act 1878 (repealed).

6 See the Freshwater Fisheries Act 1884 (repealed).

### UPDATE

#### 844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(i) Introduction/845. Modern legislation.

### **845. Modern legislation.**

Almost all the previous legislation relating to salmon, trout and freshwater fisheries was repealed by the Salmon and Freshwater Fisheries Act 1923<sup>1</sup>. The regulation of those fisheries is now governed by the Salmon and Freshwater Fisheries Act 1975<sup>2</sup> which, together with the Diseases of Fish Act 1937<sup>3</sup>, the Sea Fish (Conservation) Act 1967<sup>4</sup>, the Salmon Act 1986 and certain provisions of the Water Resources Act 1991 as amended by the Environment Act 1995 formulate a code of regulation. These Acts generally<sup>5</sup> apply only to England and Wales, except where otherwise expressly stated<sup>6</sup>.

1 The enactments left unrepealed were Magna Carta 1297, De Prerogativa Regis (temp incert) c 13, and some local Acts relating to particular rivers and localities. The Salmon and Freshwater Fisheries Act 1923 contained savings for the rights of conservators, commissioners, undertakers and other persons (s 89 (repealed)) and of the Crown (s 90 (repealed)). The Salmon and Freshwater Fisheries Act 1923 saved the validity of instruments in force made under Acts which it repealed; such instruments took effect as if made, granted, issued or payable under the Salmon and Freshwater Fisheries Act 1923: see s 93(2) (repealed).

2 The Salmon and Freshwater Fisheries Act 1975 is a consolidating statute which repealed and substantially re-enacted the Salmon and Freshwater Fisheries Act 1923, the Salmon and Freshwater Fisheries (Amendment) Act 1929, the Salmon and Freshwater Fisheries Act 1935, the Salmon and Freshwater Fisheries Act 1965 and the Salmon and Freshwater Fisheries Act 1972, as well as certain provisions of the Water Resources Act 1963, the Compulsory Purchase Act 1965, the Water Act 1973 and the Control of Pollution Act 1974: see the Salmon and Freshwater Fisheries Act 1975 ss 42(1), 43(1), Sch 5.

Nothing in the Salmon and Freshwater Fisheries Act 1975 affects the legal right of any conservators, directors, commissioners, undertakers or other persons to dredge, scour, cleanse or improve any navigable river, canal or other inland navigation: s 42(8). Except so far as provision was made by Sch 3 para 13 (now repealed), nothing in the Act is to be construed as authorising the Environment Agency or any other person to take or use land or other property belonging to the Crown: s 41(3) (amended by virtue of the Environment Act 1995 s 105, Sch 15 para 2). The Salmon and Freshwater Fisheries Act 1975 s 42 contains transitional provisions and savings in relation to earlier fisheries legislation. Any enactment or other document referring to an enactment repealed by the Salmon and Freshwater Fisheries Act 1975 or by the Salmon and Freshwater Fisheries Act 1923, so far as may be necessary for preserving its effect, is to be construed as referring, or as including a reference, to the corresponding enactment in the Salmon and Freshwater Fisheries Act 1975: s 42(4). In so far as any instrument made or other thing done under any other enactment repealed by the Salmon and Freshwater Fisheries Act 1975 could have been made or done under a corresponding enactment in the Act, it is not invalidated by the repeal of that enactment but has effect as if made or done under that corresponding enactment: s 42(3). For the purposes of s 42(3), anything which under the Salmon and Freshwater Fisheries Act 1923 s 93(2), had effect as if done under any enactment in that Act is to be treated, so far as may be necessary for the continuity of the law, as done under the corresponding enactment in the Salmon and Freshwater Fisheries Act 1975: s 42(3). In any byelaw made under an enactment repealed by the Salmon and Freshwater Fisheries Act 1923 'salmon' and 'trout' have the meanings assigned to them by the Salmon and Freshwater Fisheries Act 1975 s 41(1) (see para 848 notes 1, 2 post). The Local Government Act 1972 s 254(2)(c) (Secretary of State's power to amend etc enactments by order: see LOCAL GOVERNMENT vol 69 (2009) PARA 6), applies to the Salmon and Freshwater Fisheries Act 1975 as if it had been passed before 1 April 1974: s 42(6).

The Salmon and Freshwater Fisheries Act 1975 has been amended by the Salmon Act 1986, the Water Act 1989 (those amendments being developed and consolidated in the Water Resources Act 1991) and the Environment Act 1995.

3 See para 894 et seq post.

4 Some provisions of the Sea Fish (Conservation) Act 1967 relate to salmon and migratory trout: see ss 4, 5(2), 18(1)(a), (b); and paras 936, 983, 989 post.

5 As to the territorial scope of the Sea Fish (Conservation) Act 1967 see para 958 post. The Diseases of Fish Act 1937 extends to Scotland but not to Northern Ireland: see s 14(3).

6 The Salmon and Freshwater Fisheries Act 1975 does not apply to the River Tweed, and applies to so much of the River Esk as is situated in Scotland: see s 39 (amended by the Salmon Act 1986 ss 26, 41, Sch 4 para 13; the Water Act 1989 ss 141, 190, Sch 17 para 7, Sch 27 Pt I; the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 30; and the Environment Act 1995 s 105, Sch 15 paras 2, 19). Subject to the Salmon and Freshwater Fisheries Act 1975 s 39 (as amended) and s 43(3), the Act extends only to England and Wales: s 43(2). As to the application of the Salmon and Freshwater Fisheries Act 1975 to the dams constructed by the River Severn Commissioners see s 40 (amended by the Environment Act 1995 Sch 15 para 2).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **845 Modern legislation**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 3, 5--Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

NOTE 6--Water Act 1989 Sch 17 para 7 partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(i) Introduction/846. General supervision of fisheries by the Secretary of State and the Welsh Ministers.

### **846. General supervision of fisheries by the Secretary of State and the Welsh Ministers.**

Ministerial powers and functions under the legislation relating to fisheries were formerly exercised by the Minister of Agriculture, Fisheries and Food<sup>1</sup> (or, in certain cases, by the Board of Trade<sup>2</sup>). Today, such powers and functions in respect of fisheries are exercised in England by the Secretary of State<sup>3</sup> (primarily the Secretary of State for Environment, Food and Rural Affairs<sup>4</sup>) or, in Wales, by the Welsh Ministers<sup>5</sup>. Certain functions are, however, exercised jointly by the Secretary of State and the Welsh Ministers<sup>6</sup>.

1 Following the dissolution of the Ministry of Agriculture, Fisheries and Food, where a statute still refers to 'the Minister' or 'the Minister of Agriculture, Fisheries and Food', this should now be construed, in relation to England, as a reference to the Secretary of State for Environment, Food and Rural Affairs by virtue of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794, arts 2(2), 6(4): see further AGRICULTURAL LAND vol 1 (2008) PARA 643. As to the predecessors of the Ministry of Agriculture, Fisheries and Food see AGRICULTURAL LAND vol 1 (2008) PARA 643.

Note that any function of a Minister of the Crown under the Diseases of Fish Act 1937, the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975, or certain local statutory provisions or subordinate legislation which was in force immediately before 1 September 1989 was (in so far as immediately before that date it was exercisable by different ministers according to the water authority or water authority area in relation to which it was exercised) made exercisable on and after that date concurrently by the Minister of Agriculture, Fisheries and Food and by the Secretary of State; and references in any enactment to a minister, so far as they have effect for the purposes of, or in connection with, the exercise of any such function have effect accordingly: see the Water Act 1989 s 141, Sch 17 paras 1(3), (4), (5), 2; and the Water Authorities (Transfer of Functions) (Appointed Day) Order 1989, SI 1989/1530, art 2.

2 Eg the Whaling Industry (Regulation) Act 1934 s 7 empowers the Board of Trade to grant permits to kill, take and treat whales for scientific purposes: see para 1085 post. This reference to the Board of Trade is now to be read as a reference to the Secretary of State: see the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145; and the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, arts 2(1), 7(4) (both now lapsed).

3 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 Sch 1; and STATUTES vol 44(1) (Reissue) PARA 1382.

4 See note 1 supra.

5 Statutory functions relating to fisheries previously vested in Ministers of the Crown (including functions under subordinate legislation) were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1. These include the functions under the following Acts: the Sea Fish Industry Act 1951 (in respect of the functions transferred to the Secretary of State by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272); the Fisheries Act 1955; the Harbours Act 1964 ss 14, 15, 15A (as added), ss 16, 30, 31, 60, Sch 3 so far as they relate to fishery harbours; the Sea Fisheries Regulation Act 1966 (in respect of the functions transferred to the Secretary of State by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272); the Sea Fisheries (Shellfish) Act 1967; the Sea Fish (Conservation) Act 1967 (except the functions of the Board of Trade under s 8: see para 969 post); the Sea Fisheries Act 1968; the Sea Fish Industry Act 1970; the Conservation of Seals Act 1970 (except s 1(2)); the Salmon and Freshwater Fisheries Act 1975 (except the functions of 'the Minister' under s 37A (as added) and s 38: see paras 863, 925 post); the Fishery Limits Act 1976; the Import of Live Fish (England and Wales) Act 1980; the Fisheries Act 1981 (in respect of: (1) the functions of 'the Ministers' in Pt I and Schs 1, 2, 3 so far as exercisable by the Secretary of State concerned with the sea fish industry in Wales; and (2) Pts II to IV, but note that the Treasury approval requirements under Pt II continue in effect); the British Fishing Boats Act 1983 (so far as exercisable by the Secretary of State concerned with the sea fishing industry in Wales); the Diseases of Fish Act 1983; the Salmon Act 1986; and the Sea Fisheries (Wildlife Conservation) Act 1992. Functions in relation to Wales under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, and the Fisheries and Aquaculture Structures (Grants) Regulations 1995, SI 1995/1576, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

Note that previously, by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, certain ministerial functions that had been exercisable by either the Minister of Agriculture, Fisheries and Food acting alone, or by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly, were transferred in the case of functions relating to Wales to the Secretary of State, and in the case of functions relating to England, to the Minister of Agriculture, Fisheries and Food: see art 2(1), (2). The functions to which this applied were those under the Diseases of Fish Act 1937; the Sea Fish Industry Act 1951 s 21(1); the Fisheries Act 1955 s 2; the Sea Fisheries Regulation Act 1966 (except those under s 15); the Sea Fisheries (Shellfish) Act 1967; the Sea Fisheries Act 1968 ss 5, 7, 15; the Sea Fish (Conservation) Act 1967; the Sea Fish Industry Act 1970 Pts I, II (except s 24(4)), ss 49, 51, 55, Schs 3, 5; and the Fishery Limits Act 1976: see the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2, Sch 1. The exercise of the functions under the Sea Fisheries Regulation Act 1966 s 15, which relate to annual meetings of representative committees (see para 973 post), is governed by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 4, Sch 2, whereby the functions were transferred to the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales acting jointly. The functions under the Salmon and Freshwater Fisheries Act 1975 which were exercisable by the Minister of Agriculture, Fisheries and Food alone or jointly with the Secretary of State were, in relation to Wales, transferred to the Secretary of State for Wales by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 5, Sch 3 para 6(1). The functions under the Salmon and Freshwater Fisheries Act

1975 which were exercisable by the Minister of Agriculture, Fisheries and Food and the Secretary of State jointly were, in relation to the Severn-Trent Water Authority, transferred to the Minister of Agriculture, Fisheries and Food: see the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, Sch 3 para 6(2).

Since the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS), statutory functions relating to fisheries, including functions under subordinate legislation, so far as exercisable in relation to Wales, are now almost exclusively the responsibility of the Welsh Ministers (ie the First Minister and the Welsh Ministers: see ss 46, 48).

6 The functions under the following Acts are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: the Diseases of Fish Act 1937 (and the functions under that Act are exercisable by the Welsh Ministers free from the requirements for Treasury consent); the Sea Fish (Conservation) Act 1967 ss 4, 4A (as added), s 15(3) (and the functions under ss 4, 4A (as added) are exercisable by the Welsh Ministers free from the requirement for Treasury consent); the Sea Fisheries Act 1968 s 5 (so far as they relate to the identification and marking of fishing boats) and the functions of 'the appropriate Minister' under s 7; and the Import of Live Fish (England and Wales) Act 1980 ss 1, 3(2) (and the functions under s 1 are exercisable by the Welsh Ministers free from the requirement for Treasury consent): National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **846 General supervision of fisheries by the Secretary of State and the Welsh Ministers**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTES 1, 5, 6--Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

NOTES 1, 5--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

NOTE 1--Water Act 1989 Sch 17 para 1(4) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTE 5--SI 1999/672 and SI 1978/272 amended: SI 2010/630 (Wales).

Diseases of Fish Act 1983 repealed; SI 1994/1447 revoked: SI 2009/463.

NOTE 6--Import of Live Fish (England and Wales) Act 1980 s 1(1), SI 1999/672 Sch 1 amended: SI 2009/463.



Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(i) Introduction/847. Local administration of freshwater fisheries by the Environment Agency.

#### **847. Local administration of freshwater fisheries by the Environment Agency.**

Whilst the general supervision of salmon<sup>1</sup>, trout<sup>2</sup>, freshwater<sup>3</sup> and eel<sup>4</sup> fisheries in England is the responsibility of the Secretary of State for Environment, Food and Rural Affairs<sup>5</sup> and in Wales is the responsibility of the Welsh Ministers<sup>6</sup> (sometimes acting jointly<sup>7</sup>), local administration in England and Wales is now the responsibility of the Environment Agency<sup>8</sup>.

The Agency is vested with fisheries functions under the Diseases of Fish Act 1937<sup>9</sup>, the Sea Fisheries Regulation Act 1966<sup>10</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>11</sup>, Part V of the Water Resources Act 1991<sup>12</sup>, and any other enactment relating to fisheries<sup>13</sup>. It is the statutory duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries<sup>14</sup>. It is also the duty of the Agency to establish and maintain fisheries advisory committees (consisting of persons who are not members of the Agency but who appear to it to be interested in salmon fisheries, trout fisheries, freshwater fisheries or eel fisheries in the different parts of the controlled area), and to consult those committees as to the manner in which the Agency is to perform its duty of maintaining, improving and developing fisheries<sup>15</sup>.

In all cases the area in respect of which the Agency carries out its functions relating to fisheries extends to the whole of England and Wales<sup>16</sup> and such part of the territorial sea adjacent to England and Wales as extend for six miles from the baselines from which the breadth of that sea is measured<sup>17</sup>. Except in the case of the Sea Fisheries Regulations Act 1996, the Agency's fisheries functions also extend to the River Esk and its catchment whether situated in England or Scotland<sup>18</sup>, but not the River Tweed<sup>19</sup>.

1 For the meaning of 'salmon' in the Salmon and Freshwater Fisheries Act 1975 see para 848 note 1 post.

2 For the meanings of 'trout' and 'migratory trout' see para 848 note 2 post.

3 For the meaning of 'freshwater fish' see para 848 note 3 post.

4 As to the meaning of 'eels' see para 848 note 27 post.

5 As to the fisheries functions of the Secretary of State for Environment, Food and Rural Affairs see para 846 ante.

6 As to the fisheries functions of the Welsh Ministers see para 846 ante.

7 See para 846 ante.

8 Local administration was formerly the responsibility of fishery boards operating within districts known as fishery districts, but from 1948 their functions were in most cases transferred to river boards (see the River Boards Act 1948 ss 1, 4, 25, 28, Sch 3 (all now repealed)) and subsequently to river authorities (see the Water Resources Act 1963 ss 4, 5, Sch 3 paras 2-4 (all now repealed)), then to water authorities (see the Water Act 1973 ss 2, 9, 18, 33, Schs 1, 2 (all now repealed)) and are now predominantly vested in the Environment Agency which was established by the Environment Act 1995 s 1. The Environment Agency took over the fisheries functions of the National Rivers Authority (see ss 2(1)(a)(v), 105, Sch 15 paras 2, 4(1)), which was created by the Water Act 1989 and took over fisheries functions from the water authorities, but was abolished by the Environment Act 1995. As to the functions transferred from the National Rivers Authority to the Environment Agency see WATER AND WATERWAYS vol 100 (2009) PARA 12. See also ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. The Environment Agency is a national body which operates by way of regional offices which are able to act to some extent independently (eg by making local byelaws): see further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. As to the Environment Agency's powers and

duties in relation to water see WATER AND WATERWAYS vol 100 (2009) PARA 17. As to the general powers of the Environment Agency in respect of fisheries see para 930 post.

9 See para 894 et seq post. In the Diseases of Fish Act 1937, the words 'water authority', wherever they occur, and any reference which in England and Wales falls to be construed as a reference to a water authority, have effect:

(1) in relation to the area which is the area in relation to which the Environment Agency carries out functions under the Act, as a reference to the Environment Agency;

(2) in relation to the area comprising the districts of district salmon fishery boards (within the meaning of the Salmon Act 1986), as a reference to any such board; and

(3) in relation to the River Tweed, as a reference to the council constituted under the Tweed Fisheries Act 1969 s 6,

and references to an area, in relation to the Environment Agency, any such board or that council, have effect as references to the area so described, to the district of that board or, as the case may be, to the River Tweed: Water Act 1989 Sch 17 para 3(1); Environment Act 1995 s 105, Sch 15 para 4(1)).

10 See para 964 et seq post.

11 See para 848 et seq post.

12 See paras 863, 868 et seq post; and WATER AND WATERWAYS. Any provision of the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975, and any local statutory provision or subordinate legislation which was in force immediately before 1 September 1989 and relates to the carrying out by the National Rivers Authority of any function relating to fisheries (or in the case of subordinate legislation, was made by virtue of any such provision or under the Diseases of Fish Act 1937) which contains, or falls to be construed as containing, a reference (however framed and whether or not in relation to an area) to the National Rivers Authority has effect on and after 1 September 1989 as if that reference were a reference to the Environment Agency: see the Water Act 1989 s 141, Sch 17 para 1(1), (2), (4); and the Environment Act 1995 s 105, Sch 15 para 2.

13 See ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 70.

14 Environment Act 1995 s 6(6).

15 See ibid s 13(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 84.

16 See ibid s 6(7).

17 See ibid s 6(7)(a).

18 See ibid s 6(7)(b), (c).

19 See the Environment Act 1995 s 6(7). For the meaning of 'the River Tweed' see the Tweed Fisheries Amendment Act 1859, as amended by byelaws; definition applied by the Environment Act 1995 s 6(8).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **847 Local administration of freshwater fisheries by the Environment Agency**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTE 8--Environment Act 1995 s 2(1)(a)(v) amended: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

NOTES 9, 12--Diseases of Fish Act 1937 repealed: SI 2009/463.

NOTE 9--Water Act 1989 Sch 17 para 3 repealed: SI 2009/463.

TEXT AND NOTES 10, 12--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

NOTE 12--Water Act 1989 Sch 17 para 1(4) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTE 14--Environment Act 1995 s 6(6) amended: Marine and Coastal Access Act 2009 s 230(2). See further Environment Act 1995 s 6(8) (amended by Marine and Coastal Access Act 2009 s 230(3)).

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Environment Act 1995 s 6(6) applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

NOTE 16--Environment Act 1995 s 6(7)(b) amended: SI 2009/463.

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## **(ii) Fishing Methods**

### **A. PERMITTED METHODS OF FISHING**

#### **848. Permitted fishing instruments.**

The Salmon and Freshwater Fisheries Act 1975 imposes restrictions on the use of various instruments and methods for catching salmon<sup>1</sup>, trout<sup>2</sup> and freshwater fish<sup>3</sup>. In some cases, however, there are exceptions to such restrictions; for example, exceptions to prohibitions have been enacted which, provided the necessary licence has been obtained<sup>4</sup> and there is no byelaw to the contrary<sup>5</sup>, permit the use of: (1) rod and line and a landing net, gaff or taylor used in connection with the rod and line<sup>6</sup>; (2) fishing weirs<sup>7</sup> and fishing mill dams<sup>8</sup> which were lawfully in use on 6 August 1861 and are provided with a free gap or fish pass respectively<sup>9</sup>; (3) fixed engines<sup>10</sup> certified to be privileged fixed engines, or which were lawfully in use during the open season of 1861<sup>11</sup>, and fixed engines erected under powers conferred by the Salmon and

Freshwater Fisheries Acts 1907 and 1923<sup>12</sup>; (4) certain movable nets<sup>13</sup>; (5) with the Environment Agency's previous written permission<sup>14</sup>, a firearm<sup>15</sup>, light<sup>16</sup>, otter lath or jack<sup>17</sup>, wire or snare<sup>18</sup>, spear, gaff, stroke-haul, snatch<sup>19</sup> or other like instrument<sup>20</sup>, crossline<sup>21</sup> or setline<sup>22</sup>, or stone or other missile<sup>23</sup>, if used, in any case, for the purpose of the preservation or development of a private fishery<sup>24</sup>; (6) fish roe if used for the like purpose<sup>25</sup> or for the artificial propagation of fish or for some scientific purpose<sup>26</sup>.

Eel baskets less than ten inches in diameter and devices authorised by the Environment Agency are excepted from the general restrictions on the use of eel baskets and other devices<sup>27</sup>.

1 'Salmon' means all fish of the salmon species and includes part of a salmon: Salmon and Freshwater Fisheries Act 1975 s 41(1).

2 'Trout' means any fish of the salmon family commonly known as trout, including migratory trout and char and also includes part of a trout; and 'migratory trout' means trout which migrate to and from the sea: *ibid* s 41(1).

3 See *ibid* ss 1-8, 21 (as amended); and paras 849 et seq, 916 post. 'Freshwater fish' means any fish living in fresh water exclusive of salmon and trout and of any kinds of fish which migrate to and from tidal waters and of eels: s 41(1).

4 See para 864 et seq post.

5 See note 6 *infra*; and paras 932-933 post.

6 See the Salmon and Freshwater Fisheries Act 1975 ss 1(4), 3(3), 25(4). The exemption applies where a person has such a gaff or tailer in his possession intending so to use it: see s 1(4); and para 849 post. 'Rod and line' means a single rod and line: s 41(1). 'Gaff' and 'tailer' are not defined in the Act. However, the Environment Agency can by byelaw regulate the use of a gaff at certain times of year (eg for the protection of fish while spawning): see para 932 post. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

7 'Fishing weir' means any erection, structure or obstruction fixed to the soil either temporarily or permanently across or partly across a river or branch of a river and used for the exclusive purpose of taking or facilitating the taking of fish: *ibid* s 41(1). As to fishing weirs see para 850 post.

8 'Fishing mill dam' means a dam used or intended to be used partly for the purpose of taking or facilitating the taking of fish, and partly for the purpose of supplying water for milling or other purpose: *ibid* s 41(1). A dam built solely for milling purposes and without any contrivance for catching fish is not a fishing mill dam, even though it does in fact make it easier to catch fish than would have been the case if there had been no dam: *Garnett v Backhouse* (1867) LR 3 QB 30; and see *Moulton v Wilby* (1863) 8 LT 284. When a fishing mill dam has ceased to be used for fishing purposes and all appliances for fishing are removed, it ceases to be a fishing mill dam: see *Rossiter v Pike* (1878) 4 QBD 24. As to fishing mill dams see para 851 post.

'Dam' includes any weir or other fixed obstruction used for the purpose of damming up water: Salmon and Freshwater Fisheries Act 1975 s 41(1). For the meaning of 'weir' see para 835 note 3 ante.

9 See *ibid* ss 7, 8 (as amended); and paras 850-851 post.

10 'Fixed engine' includes a stake net, bag net, putt or putcher; any fixed implement or engine for taking or facilitating the taking of fish; any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way; and any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for taking salmon or trout, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary: *ibid* s 41(1). For examples of what are and what are not fixed engines see *Percival v Stanton* [1954] 1 All ER 392, [1954] 1 WLR 300, DC; *Olding v Wild* (1866) 14 LT 402; *Gore v English Fisheries Comrs* (1871) LR 6 QB 561; *Irish Society v Harold* [1912] AC 287, HL; *Watts v Lucas* (1871) LR 6 QB 226. Possession of a fixed engine is good prima facie evidence of ownership: *Vance v Frost* (1894) 58 JP 398, DC.

11 Salmon and Freshwater Fisheries Act 1975 s 6(3)(a), (b). See also the Salmon Fishery Act 1861 s 11 (repealed); the Salmon Fishery Act 1865 ss 39-41, 47 (repealed); and para 854 post. The work of certification was carried out by the Special Commissioners for English Fisheries; no case is reported of a claim to exemption since the commissioners were abolished in 1873.

- 12 The Salmon and Freshwater Fisheries Acts 1907 and 1923 are now repealed. See paras 860, 931, 939 post.
- 13 For details of the restrictions on the use of nets see para 856 post.
- 14 See the Salmon and Freshwater Fisheries Act 1975 s 1(2).
- 15 See *ibid* s 1(1)(a)(i); and para 849 post. 'Firearm' means a firearm within the meaning of the Firearms Act 1968 (see s 57(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 630); Salmon and Freshwater Fisheries Act 1975 s 1(1)(a)(i).
- 16 See *ibid* s 1(1)(a)(v); and para 849 post.
- 17 'Otter lath or jack' includes any small boat or vessel, board, stick or other instrument, whether used with a hand line or as auxiliary to a rod and line, or otherwise for the purpose of running out lures, artificial or otherwise: *ibid* s 1(3). 'Otter' does not mean a live otter: *Alton v Parker* (1891) 30 LR Ir 87.
- 18 See the Salmon and Freshwater Fisheries Act 1975 s 1(1)(a)(ii); and para 849 post.
- 19 'Stroke-haul or snatch' includes any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul hooking any fish: *ibid* s 1(3).
- 20 See *ibid* s 1(1)(a)(iv); and para 849 post. A net with an illegally small mesh is not a like instrument to a snare: *Jones and Parry v Davies* [1898] 1 QB 405, DC.
- 21 'Crossline' means a fishing line reaching from bank to bank across water and having attached to it one or more lures or baited hooks: Salmon and Freshwater Fisheries Act 1975 s 1(3).
- 22 See *ibid* s 1(1)(a)(iii); and para 849 post. 'Setline' means a fishing line left unattended in water and having attached to it one or more lures or baited hooks: s 1(3).
- 23 *Ibid* s 1(1)(c); and para 849 post.
- 24 See *ibid* s 1(2); and para 849 post.
- 25 In the preservation or development of a private fishery: *ibid* s 2(5). The use of these prohibited instruments is only lawful if it is for the preservation or development of a private fishery and the consent of the Environment Agency has been obtained: see s 2(5) (as amended); and para 858 post.
- 26 See *ibid* s 2(5) (as amended); and paras 858-859 post.
- 27 See *ibid* s 21 (as amended); and para 872 post. 'Eels' includes elvers and the fry of eels: s 41(1).

## UPDATE

### 844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 848 Permitted fishing instruments

TEXT AND NOTES--See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 1 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out

the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--Definition of 'freshwater fish' in Salmon and Freshwater Fisheries Act 1975 s 41(1) substituted: Marine and Coastal Access Act 2009 s 223(5) (in force 1 January 2011: SI 2010/298).

NOTE 10--Definition of 'fixed engine' in Salmon and Freshwater Fisheries Act 1975 s 41(1) amended: Marine and Coastal Access Act 2009 Sch 16 para 14(2).

TEXT AND NOTE 11--Salmon and Freshwater Fisheries Act 1975 s 6 repealed: Marine and Coastal Access Act 2009 Sch 16 para 4, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

NOTE 27--Definition of 'eels' in Salmon and Freshwater Fisheries Act 1975 s 41(1) substituted: Marine and Coastal Access Act 2009 s 223(2).

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## ***B. PROHIBITED METHODS OF FISHING***

### **849. Unlawful fishing implements.**

No person, for the purpose of taking or killing salmon<sup>1</sup>, trout<sup>2</sup> or freshwater fish<sup>3</sup>, may:

- (1) use a firearm<sup>4</sup>, an otter lath or jack, wire or snare, a crossline or setline,<sup>5</sup> a spear, gaff<sup>6</sup>, stroke-haul, snatch<sup>7</sup> or other like instrument<sup>8</sup>, or a light<sup>9</sup>;
- (2) have in his possession any such instrument intending to use it to take or kill salmon, trout or freshwater fish<sup>10</sup>; or
- (3) throw or discharge any stone or other missile for the purpose of taking or killing, or facilitating the taking or killing of any salmon, trout or freshwater fish<sup>11</sup>.

These prohibitions do not apply to any person using a gaff (consisting of a plain metal hook without a barb) or taylor as auxiliary to angling with a rod and line<sup>12</sup> or having such a gaff or taylor in his possession intending so to use it<sup>13</sup>. Subject to this exception, contravention of the prohibitions by any person is an offence, unless he proves to the court's satisfaction that the act was done for the purpose of the preservation or development of a private fishery and with the previous written permission of the Environment Agency<sup>14</sup>.

A person guilty of such an offence is liable on summary conviction to three months' imprisonment, a fine at the statutory maximum or both; and on conviction on indictment to two years' imprisonment or a fine or both<sup>15</sup>.

1 For the meaning of 'salmon' see para 848 note 1 ante.

2 For the meaning of 'trout' see para 848 note 2 ante.

3 For the meaning of 'freshwater fish' see para 848 note 3 ante. Note that this provision does not prohibit the taking or killing of eels by these methods.

4 For the meaning of 'firearm' see para 848 note 15 ante.

5 For the meaning of 'otter lath or jack' see para 848 note 17 ante; for the meaning of 'crossline' see para 848 note 21 ante; and for the meaning of 'setline' see para 848 note 22 ante.

6 As to the exception for a gaff used with rod and line see the text and notes 12-14 infra; and see paras 848 ante, 857, 864 post.

7 For the meaning of 'stroke-haul or snatch' see para 848 note 19 ante.

8 Is another instrument similar to a spear, gaff, stroke-haul or snatch: see the Salmon and Freshwater Fisheries Act 1975 s 1(1)(a)(iv).

9 Ibid s 1(1)(a)(i)-(v).

10 Ibid s 1(1)(b).

11 Ibid s 1(1)(c).

12 For the meaning of 'rod and line' see para 848 note 6 ante.

13 Salmon and Freshwater Fisheries Act 1975 s 1(4).

14 Ibid s 1(2) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

15 Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 1(1), Table (entry substituted by the Salmon Act 1986 s 35). As to the penalties and proceedings for offences see also para 924 et seq post. The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **849 Unlawful fishing implements**

TEXT AND NOTES 1-14--Salmon and Freshwater Fisheries Act 1975 s 1 further amended and repealed in part: Marine and Coastal Access Act 2009 s 215, Sch 22 Pt 5.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 1 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

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### **850. Fishing weirs.**

No unauthorised fishing weir<sup>1</sup> may be used for taking or facilitating the taking of salmon<sup>2</sup> and migratory trout<sup>3</sup>. Where a fishing weir extends more than halfway across any river<sup>4</sup> at its lowest state of water, it may not be used for the purpose of taking salmon or migratory trout unless it has in it a free gap<sup>5</sup> or opening situated in the deepest part of the river between the points where it is intercepted by the weir<sup>6</sup>.

If any person uses a weir in contravention of this provision or makes any alteration in the bed of a river in such manner as to reduce the flow of water through a free gap, he is guilty of an offence<sup>7</sup>. If any person places any obstruction, uses any contrivance or does any act whereby salmon or trout<sup>8</sup> may be scared, deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year, he is guilty of an offence<sup>9</sup>. However, this<sup>10</sup> does not apply to a temporary bridge or board used for crossing a free gap, and taken away immediately after the person using it has crossed<sup>11</sup>.

A licence may be required for the use of a fishing weir for catching salmon or migratory trout<sup>12</sup>.

1 'Unauthorised fishing weir' means any fishing weir which was not lawfully in use on 6 August 1861, by virtue of a grant, charter or immemorial usage: Salmon and Freshwater Fisheries Act 1975 s 7(5). For the meaning of 'fishing weir' see para 848 note 7 ante.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 Salmon and Freshwater Fisheries Act 1975 s 7(1). For the meaning of 'migratory trout' see para 848 note 2 ante.

4 'River' includes a stream: *ibid* s 41(1).

5 The free gap must satisfy the following conditions: (1) the sides of the gap must be in a line with and parallel to the direction of the stream at the weir (*ibid* s 7 (2)(a)); and (2) the bottom of the gap must be level with the natural bed of the river above and below the gap (s 7(2)(b)); and (3) the width of the gap in its narrowest part must be not less than one-tenth part of the width of the river (s 7(2)(c)). A free gap need not be more than 40 feet wide and must not be less than three feet wide: s 7(3). As to the effect of an island dividing a narrow stream see *Rolle v Whyte* (1868) LR 3 QB 286. As to the legality of a weir and the nature of the 'free gap' see also *Duke of Devonshire v Drohan* [1900] 2 IR 161.

6 Salmon and Freshwater Fisheries Act 1975 s 7(2).

7 *Ibid* s 7(4). As to the penalty and as to forfeitures see para 924 post.

8 For the meaning of 'trout' see para 848 note 2 ante.

9 Salmon and Freshwater Fisheries Act 1975 s 12(3)(b). As to the penalty and as to forfeitures see para 924 post.

10 *Ie* the offence in *ibid* s 12(3)(b): see the text and note 9 supra.

11 *Ibid* s 12(4).

12 As to licensing see paras 864-867 post.

### **UPDATE**



## **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **850 Fishing weirs**

TEXT AND NOTES 1-7--Salmon and Freshwater Fisheries Act 1975 s 7 repealed: Marine and Coastal Access Act 2009 Sch 16 para 4, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

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### **851. Fishing mill dams.**

No unauthorised fishing mill dam<sup>1</sup> may be used for the purpose of taking or facilitating the taking of salmon<sup>2</sup> or migratory trout<sup>3</sup>, and if any person uses an unauthorised fishing mill dam, he is guilty of an offence<sup>4</sup>. A fishing mill dam must not be used for the purpose of taking salmon or migratory trout unless it has attached to it a fish pass of such form and dimensions as may be approved by the Environment Agency<sup>5</sup>, and unless the fish pass is maintained in such a condition and has constantly running through it such a flow of water as will enable salmon and migratory trout to pass up and down it<sup>6</sup>. If any person uses or attempts to use a dam in contravention of this provision he is guilty of an offence<sup>7</sup>.

Where a fish pass approved by the Environment Agency or constructed and maintained by the Environment Agency under its statutory power<sup>8</sup> is attached to a dam or obstruction, the statutory restriction on taking salmon or trout above or below an obstruction or in mill races is not enforceable in respect of the dam or obstruction until compensation has been made by the Environment Agency to the persons entitled to fish in the waters for that right of fishery<sup>9</sup>. Subject to this exception, any person is guilty of an offence who takes or kills or attempts to take or kill, except with rod and line<sup>10</sup>, or scares or disturbs any salmon or trout<sup>11</sup>, at any place above or below any dam or any obstruction<sup>12</sup> within 50 yards above or 100 yards below the dam or obstruction or within such other distance from the dam or obstruction as may be prescribed by byelaw, or in any waters under or adjacent to any mill<sup>13</sup>, or in the head race or tail race of any mill, or in any waste race or pool communicating with a mill, or in any artificial channel connected with any such dam or obstruction<sup>14</sup>.

These provisions<sup>15</sup> do not apply to any legal fishing mill dam not having a crib, box or cruive, or to any fishing box, coop, apparatus, net or mode of fishing in connection with or forming part of such a dam or obstruction for purposes of fishing<sup>16</sup>. Any person who: (1) wilfully alters or injures a fish pass<sup>17</sup>; or (2) does any act whereby salmon or trout are obstructed or liable to be obstructed in using a fish pass or whereby a fish pass is rendered less efficient<sup>18</sup>; or (3) alters a dam or the bed or banks of the river so as to render a fish pass less efficient<sup>19</sup>; or (4) uses any

contrivance or does any act whereby salmon or trout are in any way liable to be scared, hindered or prevented from passing through a fish pass<sup>20</sup>, is guilty of an offence<sup>21</sup>. So also any person who does any act for the purpose of preventing salmon or trout from passing through a fish pass or who takes or attempts to take any salmon or trout in its passage through a fish pass is guilty of an offence<sup>22</sup>. A licence, if required<sup>23</sup>, must be taken out before the dam is used for fishing purposes, and it must not be used during the close season or weekly close time<sup>24</sup>.

1 'Unauthorised fishing mill dam' means any fishing mill dam which was not lawfully in use on 6 August 1861 by virtue of a grant or charter or immemorial usage: Salmon and Freshwater Fisheries Act 1975 s 8(5). For the meaning of 'fishing mill dam' see para 848 note 8 ante.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 Salmon and Freshwater Fisheries Act 1975 s 8(1). For the meaning of 'migratory trout' see para 848 note 2 ante.

4 Ibid s 8(3)(a). As to the penalty see para 924 post.

5 As to the approval of fish passes, which may be a provisional approval, see para 862 post. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

6 Salmon and Freshwater Fisheries Act 1975 s 8(2) (amended by the Environment Act 1995 s 105, Sch 15 para 9). As to the duty to make and maintain a fish pass in a new dam see para 861 post.

7 Salmon and Freshwater Fisheries Act 1975 s 8(3)(b). As to the penalty see para 924 post. If a fishing mill dam has not a fish pass attached to it as required by law, the right of using the fishing mill dam for the purpose of taking fish is forfeited for ever, and the Environment Agency may remove from it any cage, crib, trap, box, cruipe or other obstruction to the free passage of the fish: s 8(4) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).

8 Ie under the Salmon and Freshwater Fisheries Act 1975 s 10 (as amended): see para 860 post.

9 Ibid s 17(3) (amended by the Environment Act 1995 Sch 15 paras 2, 15). The amount of any compensation is to be settled in case of dispute by a single arbitrator appointed by the Secretary of State: 18(4). As to the Secretary of State see para 846 ante.

10 For the meaning of 'rod and line' see para 848 note 6 ante.

11 For the meaning of 'trout' see para 848 note 2 ante.

12 Ie any dam or obstruction, whether artificial or natural, which hinders or retards the passage of salmon or trout: Salmon and Freshwater Fisheries Act 1975 s 17(1)(a). For the meaning of 'dam' see para 848 note 8 ante.

13 'Adjacent' is not a word to which a precise and uniform meaning is attached by ordinary usage; it is not confined to places adjoining and it means places close to or near: see *Wellington Corpn v Lower Hutt Corpn* [1904] AC 773 at 775, PC. 'Mill' includes any erection for the purpose of developing water power; and 'milling' has a corresponding meaning: Salmon and Freshwater Fisheries Act 1975 s 41(1).

14 Ibid s 17(1)(a)-(c). As to the penalty see para 924 post.

15 Ie ibid s 17 (as amended).

16 Ibid s 17(2).

17 Ibid s 12(1)(a).

18 Ibid s 12(1)(b).

19 Ibid s 12(1)(c). As to the meaning of 'river' see para 850 note 4 ante.

20 Ibid s 12(1)(d).

21 Ibid s 12(1). As to the penalty see para 924 post. The offender must also in every case pay any expense which may be incurred in restoring the fish pass to its former state of efficiency, and any such expenses may be recovered in a summary manner: s 12(1). For the purposes of s 12 (as amended) the owner or occupier of a

dam is deemed to have altered it if it is damaged, destroyed or allowed to fall into a state of disrepair, and if, after notice is served on him by the Environment Agency, he fails to repair or reconstruct it within a reasonable time so as to render the fish pass as efficient as before the damage or destruction: s 12(2) (amended by the Water Act 1989 Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).

22 Salmon and Freshwater Fisheries Act 1975 s 12(3)(a). As to the penalty see para 924 post.

23 As to licences see para 864 et seq post.

24 See the Salmon and Freshwater Fisheries Act 1975 s 20; and paras 873, 870 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **851 Fishing mill dams**

TEXT AND NOTES 1-7--Salmon and Freshwater Fisheries Act 1975 s 8 repealed: Marine and Coastal Access Act 2009 Sch 16 para 4, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

TEXT AND NOTES 9-16--Salmon and Freshwater Fisheries Act 1975 s 17 repealed: Marine and Coastal Access Act 2009 Sch 16 para 6, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

NOTE 9--Salmon and Freshwater Fisheries Act 1975 s 18(4) amended: Marine and Coastal Access Act 2009 Sch 16 para 7 (in force 1 January 2011: SI 2010/298).

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### **852. Weirs and dams with boxes or cribs.**

Any person who uses a fishing weir<sup>1</sup> or fishing mill dam<sup>2</sup> for the taking of salmon<sup>3</sup> or migratory trout<sup>4</sup> by means of boxes or cribs is guilty of an offence<sup>5</sup> unless the upper surface of the sill of the box or crib is level with the bed of the river<sup>6</sup>, and the bars or inscales of the heck or upstream side of the box or crib are not nearer to each other than two inches and are placed perpendicularly and capable of being removed<sup>7</sup>. There must not be attached to any such box or crib any spur or tail wall, leader or outrigger of a greater length than 20 feet from the upper or lower side of the box or crib<sup>8</sup>.

1 For the meaning of 'fishing weir' see para 848 note 7 ante. As to fishing weirs see para 850 ante.

2 For the meaning of 'fishing mill dam' see para 848 note 8 ante. As to fishing mill dams see para 851 ante.

3 For the meaning of 'salmon' see para 848 note 1 ante.

4 For the meaning of 'migratory trout' see para 848 note 2 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 16(1). See *Hodgson v Little* (1864) 16 CBNS 198; *Bell v Wyndham* (1865) 29 JP 214 (cases involving the prosecution of offenders using weirs to catch fish). As to the penalty see para 924 post.

6 Salmon and Freshwater Fisheries Act 1975 s 16(2)(a). As to the meaning of 'river' see para 850 note 4 ante.

7 Ibid s 16(2)(b).

8 Ibid s 16(2)(c).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **852 Weirs and dams with boxes or cribs**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 16 repealed: Marine and Coastal Access Act 2009 Sch 16 para 5, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(ii) Fishing Methods/B. PROHIBITED METHODS OF FISHING/853. Supply of water to dams and fish passes.

### **853. Supply of water to dams and fish passes.**

Unless permission in writing is granted by the Environment Agency<sup>1</sup>, any sluices for drawing off the water which would otherwise flow over any dam<sup>2</sup> in waters frequented by salmon<sup>3</sup> or migratory trout<sup>4</sup> must be kept shut on Sundays and at all times when the water is not required for milling purposes, in such manner as to cause the water to flow through any fish pass<sup>5</sup> in or connected with the dam, or, if there is no such fish pass, over the dam<sup>6</sup>. Any person who fails to comply with these provisions is guilty of an offence<sup>7</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 For the meaning of 'dam' see para 848 note 8 ante.

3 For the meaning of 'salmon' see para 848 note 1 ante.

4 For the meaning of 'migratory trout' see para 848 note 2 ante.

5 As to fish passes see paras 851 ante, 860-862 post.

6 Salmon and Freshwater Fisheries Act 1975 s 13(1) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). This provision does not prevent any person from opening a sluice for the purpose of letting off water in cases of flood or for milling purposes or when necessary for the purpose of navigation or, subject to previous notice in writing being given to the Environment Agency, for cleaning or repairing the dam or mill or its appurtenances: Salmon and Freshwater Fisheries Act 1975 13(3) (amended by the Environment Act 1995 Sch 15 para 2). It is not clear whether it is an offence to use the water for irrigation or other lawful purposes if thereby a fish pass is not sufficiently supplied with water.

7 Salmon and Freshwater Fisheries Act 1975 s 13(2). For a statutory defence see note 6 supra. As to the penalty see para 924 post.

## UPDATE

### 844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(ii) Fishing Methods/B. PROHIBITED METHODS OF FISHING/854. Fixed engines.

### 854. Fixed engines.

Any person who places<sup>1</sup> or uses an unauthorised fixed engine<sup>2</sup> in any inland<sup>3</sup> or tidal waters which are within the area of the Environment Agency<sup>4</sup> is guilty of an offence<sup>5</sup>. Fixed engines must not be used unless a licence, if required<sup>6</sup>, is taken out, and during the close season or weekly close time any fixed engine which is not a putt or putcher must be removed or rendered incapable of taking or obstructing the passage of salmon or migratory trout<sup>7</sup>.

1 Prior to 1975 the offence had been use of a fixed engine with the intent to catch and was an offence of strict liability: see *Champion v Maughan* [1984] 1 All ER 680, [1984] 1 WLR 469. However, this had created problems in that it potentially outlawed the use of any fixed device including nets whether they were to be used for catching migratory fish or not. To address this difficulty, the Salmon Act 1986 s 33 substituted a new provision for the original s 6(1): see the text and note 5 infra.

2 'Unauthorised fixed engine' means any fixed engine other than: (1) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine (Salmon and Freshwater Fisheries Act 1975 s 6(3) (a)); or (2) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage (s 6(3)(b)); or (3) a fixed engine the placing and use of which is authorised by byelaws made by the Environment Agency or by byelaws made by a local fisheries committee by virtue of the Salmon Act 1986 s 37(2) (Salmon and Freshwater Fisheries Act 1975 s 6(3)(c) (added by the Salmon Act 1986 s 33(2); and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 3(1), Sch 3 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2)); (4) or a fixed engine which is placed and used by the Environment Agency with the consent of, or in accordance with a general authorisation given by the

Secretary of State or the Welsh Ministers (Salmon and Freshwater Fisheries Act 1975 s 6(3)(d) (added by the Water Act 1989 s 141, Sch 17 para 7(1), (3); and amended by the Environment Act 1995 Sch 15 para 8)). For the meaning of 'fixed engine' see para 848 note 10 ante.

3 'Inland water' means any area of inland waters (being the whole or any part of: (1) any river, stream or other watercourse, whether natural or artificial and whether tidal or not; (2) any lake or pond, whether natural or artificial, or any reservoir or dock, in so far as the lake, pond, reservoir or dock does not fall within head (1) supra; and (3) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within head (1) or head (2) supra: Water Resources Act 1991 s 221(1); Salmon and Freshwater Fisheries Act 1975 s 41(1).

4 As to tidal waters see *Ingram v Percival* [1969] 1 QB 548, [1968] 3 All ER 657, DC. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

5 Salmon and Freshwater Fisheries Act 1975 s 6(1). As to the penalty see para 924 post. This prohibition formerly did not apply to fishing weirs (as to which see para 850 ante) or fishing mill dams (as to which see para 851 ante): see the Salmon and Freshwater Fisheries Act 1923 s 11(4)(c) (repealed). The equivalent provision of the Salmon and Freshwater Fisheries Act 1975 does not specifically exclude fishing weirs and fishing mill dams from the prohibitions on placing or using fixed engines. The use of fixed engines for taking fish other than salmon or migratory trout is not prohibited by s 6 (as amended); and see also *Watts v Lucas* (1871) LR 6 QB 226; but see *Davies v Evans* (1902) 86 LT 419, DC. A person acting under directions to that effect given by the Environment Agency may take possession of or destroy any engine placed or used in contravention of the Salmon and Freshwater Fisheries Act 1975 s 6 (as amended): s 6(2) (amended by the Water Act 1989 Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).

6 As to licences see para 864 et seq post.

7 See the Salmon and Freshwater Fisheries Act 1975 s 20; and paras 873, 875 post. As to putts and putchers see para 855 post. As to their removal see paras 873-875 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **854 Fixed engines**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 6 repealed: Marine and Coastal Access Act 2009 Sch 16 para 4, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTES 1, 2--Salmon Act 1986 s 33 repealed in part: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

NOTE 2--Salmon Act 1986 s 37 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **855. Putts and putchers.**

Putts and putchers<sup>1</sup> may not be used during the annual close season for putts and putchers<sup>2</sup>. At other periods, however, the prohibitions on taking salmon in the annual close season<sup>3</sup> or weekly close time<sup>4</sup> do not apply to the use of putts and putchers for that purpose<sup>5</sup>. Similarly the obligation to remove fixed engines and the prohibition on placing obstructions during the annual close season<sup>6</sup> and the weekly close time<sup>7</sup> only apply to putts and putchers in relation to the annual close season for putts and putchers<sup>8</sup>.

1 A putt or putcher is a conical basket or wicker trap used for catching salmon. Putts and putchers are a type of fixed engine (for the meaning of which see the Salmon and Freshwater Fisheries Act 1975 s 41(1); and para 848 note 10 ante). For a description of the use of putchers see *Holford v George* (1868) LR 3 QB 639, 32 JP 468. As to fixed engines see para 854 ante.

2 Salmon and Freshwater Fisheries Act 1975 s 19(2)(c). The close seasons and close times for putts and putchers are the period between 31 August and the following 1 May: see Sch 1 para 6(a)(iii). However, since 2000 a national byelaw aimed at conserving spring running salmon prohibits the use of putts and putchers until 1 June in any season: see paras 932-933 post. As to close seasons see para 868 et seq post.

3 As to the annual close season for salmon see para 869 post.

4 As to the weekly close time see para 874 post.

5 Salmon and Freshwater Fisheries Act 1975 s 19(2)(a).

6 As to obstructions in the annual close season see para 873 post.

7 As to obstructions in the weekly close time see para 875 post.

8 Salmon and Freshwater Fisheries Act 1975 s 20(4).

## **UPDATE**

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **855 Putts and putchers**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 ss 19, 20 repealed: Marine and Coastal Access Act 2009 Sch 16 para 8, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(ii) Fishing Methods/B. PROHIBITED METHODS OF FISHING/856. Nets.

## **856. Nets.**

Any person who takes or attempts to take salmon<sup>1</sup> or migratory trout<sup>2</sup>, except in a place where smaller dimensions are authorised by byelaw<sup>3</sup>, with any net having a mesh of less dimensions than two inches in extension from knot to knot<sup>4</sup> or eight inches measured round each mesh when wet, commits an offence<sup>5</sup>. The placing of two or more nets one behind the other, or near to each other in such manner as practically to diminish the mesh of the nets used, or the covering of the nets used with canvas, or the using of any other device so as to evade the above provisions as to mesh, is deemed to be a contravention<sup>6</sup>. Any person who shoots or works any seine or draft net<sup>7</sup> for salmon or migratory trout in any waters across more than three-fourths of the width of those waters commits an offence<sup>8</sup>.

Nets can also be fixed engines and are therefore subject to the restrictions which apply to such apparatus<sup>9</sup>. They are also subject to the licensing regime and relevant byelaws<sup>10</sup>.

- 1 For the meaning of 'salmon' see para 848 note 1 ante.
- 2 For the meaning of 'migratory trout' see para 848 note 2 ante.
- 3 As to byelaws see paras 932-933 post.
- 4 The measurement is to be made on each side of the square: Salmon and Freshwater Fisheries Act 1975 s 3(2).
- 5 Ibid s 3(2). As to the penalty see para 924 post. In this provision 'net' does not include a landing net in use as auxiliary to angling with rod and line: s 3(3). For the meaning of 'rod and line' see para 848 note 6 ante.
- 6 Ibid s 3(4). See also *Dodd v Armor* (1867) 31 JP 773; *Davies v Evans* (1902) 86 LT 419, DC.
- 7 A seine net is a net designed to hang vertically in the water, the ends being drawn together to enclose the fish. For a discussion on draft nets see *Pidler v Berry* (1888) 59 LT 230 at 231, DC.
- 8 Salmon and Freshwater Fisheries Act 1975 s 3(1). As to the penalty see para 924 post.
- 9 As to fixed engines see para 854 ante. For the meaning of 'fixed engine' see para 848 note 10 ante.
- 10 As to licensing see paras 864-867 post. As to byelaws see paras 932-933 post.

## **UPDATE**

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **856 Nets**



TEXT AND NOTES 1-8--Salmon and Freshwater Fisheries Act 1975 s 3 repealed: Marine and Coastal Access Act 2009 Sch 16 para 2, Sch 22 Pt 5 (in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(ii) Fishing Methods/B. PROHIBITED METHODS OF FISHING/857. Rod and line.

### **857. Rod and line.**

Any person who fishes for, takes, kills or attempts to take or kill salmon<sup>1</sup> with a rod and line<sup>2</sup> during the close season for rod and line, commits an offence<sup>3</sup>. An offence is also committed by any person who fishes for, takes, kills or attempts to take or kill trout<sup>4</sup>, other than rainbow trout, with a rod and line during the annual trout close season for rod and line<sup>5</sup>. No person may in any inland water<sup>6</sup> fish for, take or kill, or attempt to take or kill any freshwater fish<sup>7</sup> or rainbow trout, or fish for eels<sup>8</sup> by means of a rod and line, during the annual close season for freshwater fish or rainbow trout<sup>9</sup>. Contravention is an offence<sup>10</sup>.

No person may use a crossline<sup>11</sup> or setline<sup>12</sup>, nor may he use an otter lath or jack<sup>13</sup> as auxiliary to a rod and line, or a stroke-haul or snatch<sup>14</sup> with a rod and line, for the purpose of taking or killing salmon, trout or freshwater fish<sup>15</sup>. Contravention of this provision is an offence<sup>16</sup>. A gaff or taylor may be used as auxiliary to angling with rod and line<sup>17</sup>.

1 For the meaning of 'salmon' see para 848 note 1 ante.

2 For the meaning of 'rod and line' see para 848 note 6 ante.

3 Salmon and Freshwater Fisheries Act 1975 s 19(2)(b). Unless fixed by byelaw (see paras 932-933 post), the close season for rods is the period between 31 October and the following 1 February: s 19(1), Sch 1 para 6(a). As to the penalty and the close seasons for salmon generally see para 869 post.

4 For the meaning of 'trout' see para 848 note 2 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 19(4)(b). As to the close season and exceptions to this prohibition see para 870 post.

6 For the meaning of 'inland water' see para 854 note 3 ante.

7 For the meaning of 'freshwater fish' see para 848 note 3 ante.

8 As to the meaning of 'eels' see para 848 note 27 ante.

9 Salmon and Freshwater Fisheries Act 1975 s 19(6), (7). As to the exceptions and the close seasons for freshwater fish and rainbow trout see para 871 post.

10 Ibid s 19(6), (7). As to the penalties see para 871 post.

11 For the meaning of 'crossline' see para 848 note 21 ante.

12 For the meaning of 'setline' see para 848 note 22 ante.

13 For the meaning of 'otter lath or jack' see para 848 note 17 ante.

14 For the meaning of 'stroke-haul or snatch' see para 848 note 19 ante.

15 Salmon and Freshwater Fisheries Act 1975 s 1(1).

16 Ibid s 1(2). As to the exception and as to the penalty see para 849 ante.

17 Ibid s 1(4); and see para 849 ante.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **857 Rod and line**

TEXT AND NOTES 1-10--Salmon and Freshwater Fisheries Act 1975 s 19 repealed: Marine and Coastal Access Act 2009 Sch 16 para 8, Sch 22 Pt 5.

TEXT AND NOTES 15-17--Salmon and Freshwater Fisheries Act 1975 s 1 amended and repealed in part: Marine and Coastal Access Act 2009 s 215, Sch 22 Pt 5.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 1 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

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### **858. Unclean and immature fish.**

A person is guilty of an offence if he knowingly<sup>1</sup> takes, kills or injures, or attempts to take, kill or injure, any salmon<sup>2</sup>, trout<sup>3</sup> or freshwater fish<sup>4</sup> which is unclean<sup>5</sup> or immature<sup>6</sup>; or if he buys, sells or exposes for sale, or has in his possession any salmon, trout or freshwater fish which is unclean or immature, or any part of any such fish<sup>7</sup>. These provisions do not apply to any person who takes a fish accidentally and returns it to the water with the least possible injury<sup>8</sup>. A person is not guilty of an offence<sup>9</sup> in respect of any act if he does the act for the purpose of the artificial propagation of salmon, trout or freshwater fish or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous written permission of the Environment Agency<sup>10</sup>.

1 A person who, while fishing for trout, catches samlets and keeps them, not knowing the difference and having no intention to catch samlets, is not guilty of contravening this provision: *Hopton v Thirwall* (1863) 9 LT 327. A samlet is a young salmon.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meaning of 'trout' see para 848 note 2 ante.

4 For the meaning of 'freshwater fish' see para 848 note 3 ante.

5 'Unclean' in relation to any fish means that the fish is about to spawn or has recently spawned and has not recovered from spawning: Salmon and Freshwater Fisheries Act 1975 s 41(1).

6 Ibid s 2(2)(a). 'Immature' in relation to salmon means that the salmon is less than 12 inches long measured from the tip of the snout to the fork or cleft of the tail, and in relation to any other fish means that it is less than such length (if any) as may be prescribed by byelaws applicable to the water in which the fish is taken: s 41(1). As to byelaws see paras 932-933 post.

7 Ibid s 2(2)(b). As to the penalties and proceedings for offences see para 924 et seq post.

8 Ibid s 2(3).

9 ie an offence under ibid s 2 (as amended).

10 Ibid s 2(5) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. Note that this exemption also applies to offences under the Salmon and Freshwater Fisheries Act 1975 s 2(1), (4): see paras 859, 920 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **858 Unclean and immature fish**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 2 further amended: Marine and Coastal Access Act 2009 s 216.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 2 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

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### **859. Fish roe.**

Any person who, for the purpose of fishing for salmon<sup>1</sup>, trout<sup>2</sup> or freshwater fish<sup>3</sup>, uses any fish roe, or buys, sells or exposes for sale or has in his possession any roe of salmon or trout, is

guilty of an offence<sup>4</sup>. However, a person is not guilty of this offence in respect of any act if he does the act for the purpose of the artificial propagation of salmon, trout or freshwater fish or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous written permission of the Environment Agency<sup>5</sup>.

1 For the meaning of 'salmon' see para 848 note 1 ante.

2 For the meaning of 'trout' see para 848 note 2 ante.

3 For the meaning of 'freshwater fish' see para 848 note 3 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 2(1). As to the penalties and proceedings for offences see para 924 et seq post.

5 Ibid s 2(5) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **859 Fish roe**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 2 further amended: Marine and Coastal Access Act 2009 s 216.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 2 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

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## **(iii) Construction of Fish Passes etc and Other Works**

### **860. Power of the Environment Agency to construct and alter fish passes and free gaps.**

The Environment Agency<sup>1</sup> may construct and maintain in any dam<sup>2</sup>, or in connection with any dam, a fish pass<sup>3</sup> of such form and dimensions as it may determine, so long as no injury is done by such a fish pass to the milling power, or to the supply of water of or to any navigable river<sup>4</sup>, canal or other inland navigation<sup>5</sup>. The Environment Agency may abolish or alter, or restore to its former state of efficiency, any existing fish pass or free gap<sup>6</sup>, or substitute another fish pass or free gap, provided that no injury is done to the milling power or to the supply of water of or to any navigable river, canal or other inland navigation<sup>7</sup>.

If any person injures any such new or existing fish pass he must pay the expenses incurred by the Environment Agency in repairing the injury<sup>8</sup>. If any person obstructs a person legally authorised whilst he is doing any act authorised by these provisions<sup>9</sup>, he is guilty of an offence<sup>10</sup>. If any injury is caused to any dam by reason of the construction, abolition or alteration of a fish pass or the abolition or alteration of a free gap under these powers<sup>11</sup>, any person sustaining any loss as a result may recover from the Environment Agency compensation for the injury sustained<sup>12</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 For the meaning of 'dam' see para 848 note 8 ante.

3 As to the duty to make and maintain fish passes see para 861 post. As to the penalty for injuring or obstructing fish passes see para 851 ante.

4 As to the meaning of 'river' see para 850 note 4 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 10(1) (amended by the Environment Act 1995 ss 105, 120, Sch 15 paras 2, 11, Sch 24). As to the requirement for the Secretary of State's consent for works below high water mark see para 863 post.

6 As to free gaps see para 850 note 5 ante. The Environment Agency must not exercise this power unless reasonable notice of its intention to do so has been served on the owner and occupier of the dam, fish pass or free gap with a plan and specification of the proposed work; and the Agency must take into account any resulting objections before doing the proposed work: Salmon and Freshwater Fisheries Act 1975 s 18(2) (substituted by the Environment Act 1995 Sch 15 para 16).

7 Salmon and Freshwater Fisheries Act 1975 s 10(2) (amended by the Environment Act 1995 Sch 15 paras 2, 11, Sch 24).

8 Salmon and Freshwater Fisheries Act 1975 s 10(3) (amended by the Environment Act 1995 Sch 15 para 2). Any such expenses may be recovered by the Environment Agency in a summary manner: Salmon and Freshwater Fisheries Act 1975 s 10(3) (as so amended). It is an offence to wilfully alter or injure a fish pass: see s 12 (as amended); and paras 850-851 ante.

9 Ie authorised by *ibid* s 10 (as amended): see the text and notes 1-8 supra.

10 *Ibid* s 18(1). As to the penalty see para 924 post.

11 Ie under the powers conferred by *ibid* s 10 (as amended): see the text and notes 1-8 supra.

12 *Ibid* s 18(3). The amount of compensation is to be settled in case of dispute by a single arbitrator appointed by the Secretary of State or the Welsh Ministers: s 18(4). Where the Environment Agency is liable to pay compensation under the Salmon and Freshwater Fisheries Act 1975 Pt II (ss 6-18) (as amended) in respect of injury or damage caused by the making or maintaining of any work, compensation is not recoverable unless proceedings for its recovery are instituted within two years from the completion of the work: s 18(5) (amended by the Environment Act 1995 Sch 15 para 2).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **860 Power of the Environment Agency to construct and alter fish passes and free gaps**

NOTE 12--Salmon and Freshwater Fisheries Act 1975 s 18(4) amended: Marine and Coastal Access Act 2009 Sch 16 para 7 (in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iii) Construction of Fish Passes etc and Other Works/861. Fish passes at new or altered dams.

### **861. Fish passes at new or altered dams.**

Where, in any waters frequented by salmon<sup>1</sup> or migratory trout<sup>2</sup>, a new dam<sup>3</sup> is constructed or an existing dam is raised or otherwise altered so as to create increased obstruction to the passage of salmon or migratory trout, or any other obstruction to the passage of salmon or migratory trout is created, increased or caused, or where, in any such waters, a dam, which from any cause has been destroyed or taken down to the extent of one-half of its length, is rebuilt or reinstated, the owner<sup>4</sup> or occupier<sup>5</sup> for the time being of the dam or obstruction must, if so required by notice given by the Environment Agency<sup>6</sup>, make a fish pass for salmon or migratory trout<sup>7</sup>. The fish pass must be made within such reasonable time as may be specified in the notice and be of such form and dimensions as the Environment Agency may approve<sup>8</sup> as part of the structure of, or in connection with, the dam or obstruction and must thereafter be maintained in an efficient state<sup>9</sup>.

If any such owner or occupier fails to make such a fish pass, or to maintain it in an efficient state, he is guilty of an offence<sup>10</sup>.

The Environment Agency may cause to be done any work required to be done by these provisions, and for that purpose may enter on the dam or obstruction or any land adjoining it<sup>11</sup>, and may recover the expenses of doing the work in a summary manner from any person in default<sup>12</sup>. If any person obstructs a person legally authorised whilst he is doing any act authorised by these provisions, he is guilty of an offence<sup>13</sup>.

1 For the meaning of 'salmon' see para 848 note 1 ante.

2 For the meaning of 'migratory trout' see para 848 note 2 ante.

3 For the meaning of 'dam' see para 848 note 8 ante.

4 'Owner' includes any person who is entitled to receive rents from a fishery or premises: Salmon and Freshwater Fisheries Act 1975 s 41(1).

5 'Occupier', in relation to a fishery or premises, includes any person for the time being in actual possession of the fishery or premises: *ibid* s 41(1).

6 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

7 Salmon and Freshwater Fisheries Act 1975 s 9(1) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 paras 2, 10). Nothing in these provisions: (1) authorises the doing of anything that may injuriously affect any public waterworks or navigable river, canal or inland navigation, or any dock, the supply of water to which is obtained from any navigable river, canal or inland navigation, under any Act of Parliament (Salmon and Freshwater Fisheries Act 1975 s 9(4)(a)); or (2) prevents any person from removing a fish pass for the purpose of repairing or altering a dam or other obstruction, provided that the fish pass is restored to its former state of efficiency within a reasonable time (s 9(4)(b)); or (3) applies to any alteration of a dam or other obstruction, unless: (a) the alteration consists of a rebuilding or reinstatement of a dam or other obstruction destroyed or taken down to the extent of one-half of its length; or (b) the dam or obstruction as altered causes more obstruction to the passage of salmon or migratory trout than was caused by it as lawfully constructed or maintained at any previous date (s 9(4)(c)).

8 As to the Environment Agency's approval, which may be provisional, see generally para 862 post. Where a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction is revoked, the period within which a fish pass is to be made as part of or in connection with the obstruction may be extended: see *ibid* s 11(3); and para 862 post.

9 *Ibid* s 9(1) (as amended: see note 7 *supra*).

10 *Ibid* s 9(2). As to the penalty see para 924 post.

11 *Ibid* s 9(3) (amended by the Environment Act 1995 Sch 15 para 2).

12 Salmon and Freshwater Fisheries Act 1975 s 9(3).

13 *Ibid* s 18(1). As to the penalty see para 924 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iii) Construction of Fish Passes etc and Other Works/862. Environment Agency's power to approve fish passes and gaps.

### **862. Environment Agency's power to approve fish passes and gaps.**

The Environment Agency<sup>1</sup> may approve and certify any fish pass<sup>2</sup> if it is of the opinion that it is efficient in all respects and for all purposes<sup>3</sup>. Where a fish pass has received the approval of the Environment Agency and the approval has not been revoked, it is deemed to be a fish pass in conformity with the statutory requirements<sup>4</sup> notwithstanding that it was not constructed in the manner and by the persons specified by statute<sup>5</sup>. The Environment Agency may construct and maintain in any dam<sup>6</sup> a fish pass, or abolish, alter or restore to its former condition any existing fish pass or free gap<sup>7</sup>, or substitute another<sup>8</sup>. If, in giving any approval or consent to or in relation to a fish pass, the Environment Agency indicates that fact, the approval or consent may be provisional until it notifies the applicant for approval or consent that the pass is functioning to its satisfaction<sup>9</sup>. While any such approval or consent is provisional the

Environment Agency may, after giving the applicant not less than 90 days' notice of its intention to do so, revoke the approval or consent<sup>10</sup>.

- 1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.
- 2 As to fish passes see paras 851, 853, 860-861 ante.
- 3 Salmon and Freshwater Fisheries Act 1975 s 11(4) (amended by the Environment Act 1995 s 105, Sch 15 para 12). This approval may be given whether the fish pass was constructed under the Salmon and Freshwater Fisheries Act 1975 or not: s 11(4) (as so amended).
- 4 le in conformity with the Salmon and Freshwater Fisheries Act 1975: s 11(5)
- 5 Ibid s 11(5) (amended by the Environment Act 1995 Sch 15 para 12).
- 6 For the meaning of 'dam' see para 848 note 8 ante.
- 7 As to free gaps see further para 850 ante.
- 8 See the Salmon and Freshwater Fisheries Act 1975 s 10 (as amended); and para 860 ante. The Environment Agency may not construct, abolish or alter a fish pass or abolish or alter a free gap in pursuance of s 10 (as amended), or do any work under s 15 (see para 923 post), unless reasonable notice of the application under the relevant provision has been served on the owner and occupier of the dam, fish pass or free gap, watercourse, mill race, cut, leat, conduit or other channel, with a plan and specification of the proposed work: see s 18(2) (substituted by the Environment Act 1995 Sch 15 para 16);. See paras 860 ante, 923 post. Before undertaking the work the Environment Agency must take into consideration any objections by the owner or occupier: see the Salmon and Freshwater Fisheries Act 1975 s 18(2) (as so substituted). As to the meaning of 'owner' see para 861 note 4 ante. As to the meaning of 'occupier' see para 861 note 5 ante.
- 9 Ibid s 11(1) (substituted by the Environment Act 1995 Sch 15 para 12). The applicant for such an approval is liable to meet any costs incurred (whether by him or by the Environment Agency or any other person) in determining whether the fish pass in question is functioning to the Agency's satisfaction and must provide the Environment Agency with such information and assistance as it may require for the purpose of performing such functions: Salmon and Freshwater Fisheries Act 1975 s 11(1A) (added by the Environment Act 1995 Sch 15 para 12).
- 10 Salmon and Freshwater Fisheries Act 1975 s 11(2) (amended by the Environment Act 1995 Sch 15 para 12). Where the Environment Agency revokes a provisional approval given to a fish pass forming part of or in connection with a dam or other obstruction, it may extend the period within which a fish pass is to be made as part of or in connection with the obstruction: Salmon and Freshwater Fisheries Act 1975 s 11(3) (as so amended). See also para 861 note 8 ante.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iii) Construction of Fish Passes etc and Other Works/863. Approval of works below high-water mark.



### **863. Approval of works below high-water mark.**

Any works proposed to be constructed<sup>1</sup> on, over or under tidal land below high-water mark of ordinary spring tides must be constructed only in accordance with such plans and sections and subject to such restrictions and regulations as the Secretary of State approves in writing before they are commenced<sup>2</sup>. Any alteration or extension of any such works is subject to similar approval<sup>3</sup>. If any such work is commenced or completed contrary to these provisions, the Secretary of State may abate and remove it and restore it to its former condition at the cost of the person who commenced or executed it, or, if he is not the owner of the work, of the owner<sup>4</sup>.

1       le constructed under the provisions of the Salmon and Freshwater Fisheries Act 1975. However, note that s 38 applies to any proposed construction, alteration or extension under the Water Resources Act 1991 s 156 (acquisition of land etc for fisheries purposes: see para 931 post) as it applies to any proposed construction, alteration or extension under the Salmon and Freshwater Fisheries Act 1975: see the Water Resources Act 1991 s 181(3); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 329.

2       Salmon and Freshwater Fisheries Act 1975 s 38(1). Section 38 is in addition to and not in derogation of any local Act: s 38(4). As to the Secretary of State see para 846 ante. Note that the functions under s 38 have not been transferred to the Welsh Ministers: see para 846 ante.

3       Ibid s 38(2).

4       Ibid s 38(3). The cost is recoverable summarily by the Secretary of State: s 38(3).

### **UPDATE**

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **863 Approval of works below high-water mark**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iv) Licences/864. Fishing licences.

### **(iv) Licences**

### **864. Fishing licences.**

The Environment Agency<sup>1</sup> must, by means of a system of licensing, regulate fishing for salmon<sup>2</sup> and trout<sup>3</sup> and, except so far as excused by the Secretary of State or the Welsh Ministers<sup>4</sup>, must

by such means regulate fishing for freshwater fish<sup>5</sup> of any description or eels<sup>6</sup>. A fishing licence<sup>7</sup> entitles the person to whom it was granted and no others to use an instrument specified in the licence to fish for any fish of such a description, in such area or areas and for such period as is specified<sup>8</sup>.

Subject to certain limitations<sup>9</sup> the Environment Agency must grant a fishing licence to every applicant who is at the time of the application not disqualified from holding a fishing licence, on payment of the duty in respect of the instrument in which the licence relates<sup>10</sup>. A fishing licence does not confer any right to fish at a place or a time at which the licensee is not otherwise entitled to fish<sup>11</sup>, nor does it authorise the erection of any structure or the use of any installation or instrument for or in connection with fishing the erection or use of which would be otherwise illegal<sup>12</sup>.

The Environment Agency may grant a temporary licence authorising the use of an instrument for fishing in circumstances specified in the licence during a period not exceeding 14 days<sup>13</sup>.

Any person or association entitled to an exclusive right of fishing in any inland waters<sup>14</sup> may be granted a general licence to fish in those waters subject to any conditions agreed between the Environment Agency and the licensee<sup>15</sup>. Such a licence entitles the licensee and any person authorised by him in writing or, in the case of an association, by its secretary so to fish<sup>16</sup>.

A fishing licence for the use of an instrument, other than a rod and line, to fish for salmon and trout also authorises the use of the instrument for that purpose by the duly authorised servants or agents of the person to whom it was granted<sup>17</sup>.

A fishing licence for the use of a rod and line<sup>18</sup> entitles the licensee to use as ancillary to that use a gaff<sup>19</sup> or a tailer or landing net<sup>20</sup>. A fishing licence for the use of any instrument for fishing for salmon authorises the use of that instrument for fishing for trout<sup>21</sup>; and a fishing licence for the use of any instrument for fishing for salmon or trout authorises the use of that instrument for fishing for freshwater fish and eels<sup>22</sup>.

A person is guilty of an offence if, in any place in which fishing for fish of any description is regulated by a system of licensing, he: (1) fishes for or takes fish of that description otherwise than by means of an instrument<sup>23</sup> which he is entitled to use for that purpose by virtue of a fishing licence or otherwise than in accordance with the conditions of the licence<sup>24</sup>; or (2) has in his possession with intent to use it for that purpose an instrument other than one which he is authorised to use for that purpose by virtue of such a licence<sup>25</sup>.

If the instrument, or each of the instruments in question, is a rod and line, the offence is triable summarily and is punishable with a fine at level 4 on the standard scale<sup>26</sup>. In any other case the offence can be tried summarily or on indictment; if tried summarily the maximum penalty is three months imprisonment or a fine of the statutory maximum or both, and if tried on indictment the punishment is two years' imprisonment or a fine or both<sup>27</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meaning of 'trout' see para 848 note 2 ante.

4 As to the Secretary of State and the Welsh Ministers see para 846 ante.

5 For the meaning of 'freshwater fish' see para 848 note 3 ante.

6 Salmon and Freshwater Fisheries Act 1975 s 25(1) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the meaning of 'eels' see para 848 note 27 ante.

7 ie a licence granted for the purposes of the Salmon and Freshwater Fisheries Act 1975 s 25 (as amended).

8 Ibid s 25(2) (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (5)). Licences in force under the Salmon and Freshwater Fisheries Act 1923 s 61 (repealed) immediately before 29 June 1972, are deemed to have been made under the Salmon and Freshwater Fisheries Act 1975 s 25 (as amended): see s 25(9). As to fees and duties in respect of fishing licences see para 865 post.

9 As to the limitations see *ibid* s 26 (as amended); and para 867 post.

10 Ibid s 25(8), Sch 2 para 15 (amended by the Environment Act 1995 Sch 15 para 2).

11 Salmon and Freshwater Fisheries Act 1975 Sch 2 para 16.

12 Ibid Sch 2 para 17.

13 Ibid Sch 2 para 7 (amended by the Environment Act 1995 Sch 15 para 2). As to the duty on temporary licences see para 865 post.

14 For the meaning of 'inland water' see para 854 note 3 ante.

15 Salmon and Freshwater Fisheries Act 1975 s 25(7). As to the right to withhold a general licence see *Mills v Avon and Dorset River Board* [1955] Ch 341, [1955] 1 All ER 382.

16 Salmon and Freshwater Fisheries Act 1975 s 25(7). In the case of the entitlement of a person authorised in writing, this provision is expressed to be subject to the Salmon and Freshwater Fisheries Act 1975 Sch 4 para 9 (see para 924 post): see s 25(7).

17 Ibid s 25(3). This is subject to Sch 2 paras 9-13: see s 25(3) (amended by the Salmon Act 1986 s 36(2)). A person who uses an instrument of any description for fishing in an area in relation to which an order under the Salmon and Freshwater Fisheries Act 1975 s 26 (as amended) limiting the number of licences for fishing with instruments of that description is in force is not to be treated as the duly authorised servant or agent of any holder of a licence to use an instrument of that description unless, at the time that person uses the instrument:

(1) his name and address are entered on the licence (Sch 2 para 9(1)(a) (Sch 2 para 9 substituted by the Salmon Act 1986 s 36(1))); and

(2) he is not himself the holder of a licence to use an instrument of that description in that area (Salmon and Freshwater Fisheries Act 1975 Sch 2 para 9(1)(b) (as so substituted)); and

(3) he is accompanied by the licensee or has the consent of the Environment Agency to his use of the instrument in the absence of the licensee (Sch 2 para 9(1)(c) (as so substituted; and amended by the Environment Act 1995 Sch 15 para 2)).

Note that the consent of Environment Agency for the purposes of head (3) *supra* will not be given except in relation to a period which appears to the Agency to be a period throughout which the licensee will be unable through illness or injury to accompany his servant or agent: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 9(3)(a) (as so substituted; and amended by the Environment Act 1995 Sch 15 para 2).

A person who uses an instrument of any description for fishing in an area in which no such order is in force is not to be treated as the duly authorised servant or agent of any holder of a licence to use an instrument of that description unless, at the time that person uses the instrument: (a) his name and address are entered on the licence; or (b) he is accompanied by the licensee; or (c) he has the consent of the Environment Agency to his use of the instrument otherwise than where there is compliance with head (a) or head (b) *supra*: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 9(2) (as so substituted). Note that the consent of Environment Agency will not be given except where the giving of the consent appears to the Agency to be required by the special circumstances of the case: Sch 2 para 9(3)(b) (as so substituted).

The name and address of a servant or agent may be entered on a licence by an employee of the Environment Agency authorised to do so or by the licensee or an agent who has been appointed by the licensee to act for these purposes, and whose appointment, together with his name and address, has been notified to the Environment Agency: Sch 2 para 10 (amended by the Environment Act 1995 Sch 15 para 2). The date of entry in the licence must be stated in the licence at the time of the making of the entry, and within 24 hours of the making of an entry by a licensee or his agent a copy must be sent to the Environment Agency, together with the prescribed fee (see para 865 post) for every name and address entered: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 11 (amended by the Environment Act 1995 Sch 15 para 2). The name and address of a servant or agent may be removed from, or inserted in, a licence on payment of the prescribed fee (see para 865 post) for each removal or insertion: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 12.

The number of servants or agents whose names may at any time be entered on a licence must not exceed twice the number of persons who in the Environment Agency's opinion are required to work at one time the instrument to which the licence relates or, where the applicant for the licence notifies the Agency at the time of

the application that he proposes to take part in working the instrument, one less than twice that number: Sch 2 para 13 (amended by the Environment Act 1995 Sch 15 para 2). Any person who, with intent to deceive, enters on a licence more names than are permitted, or states falsely the date of entry in a licence, is guilty of an offence: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 14. As to the penalties see para 924 post.

18 For the meaning of 'rod and line' see para 848 note 6 ante.

19 The gaff must consist of a plain metal hook without a barb: Salmon and Freshwater Fisheries Act 1975 s 25(4).

20 Ibid s 25(4).

21 Ibid s 25(5).

22 Ibid s 25(6).

23 It may be the case that this provision makes it an offence to take a fish without an instrument (eg by 'groping' or 'tickling') or by any other instrument other than a rod or line which is not an instrument specifically prohibited under the Salmon and Freshwater Fisheries Act 1975 s 1: see Howarth *Freshwater Fishery Law* (1987) pp 104-105.

24 Salmon and Freshwater Fisheries Act 1975 s 27(a). It seems that the fish must be alive, and it is no offence to take dead fish unless there is a byelaw to the contrary: see *Gazard v Cooke* (1890) 55 JP 102, DC; and para 932 post; but see *Stead v Tillotson* (1900) 69 LJQB 240.

25 Salmon and Freshwater Fisheries Act 1975 s 27(b).

26 Ibid s 37, Sch 4 Pt I, Table (entry substituted by the Salmon Act 1986 s 35). As to the standard scale see para 841 note 4 ante.

27 See the Salmon and Freshwater Fisheries Act 1975 Sch 4 Pt I Table (entry as substituted: see note 26 supra). As to the statutory maximum see para 849 note 15 ante.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **864 Fishing licences**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 ss 25, 27, Sch 2 further amended and repealed in part: Marine and Coastal Access Act 2009 s 217, Sch 16 paras 9, 11, 16, Sch 22 Pt 5 (all in force by 1 January 2011: SI 2009/3345, SI 2010/298).

As to the authorisation of fishing otherwise than by licensable means see Salmon and Freshwater Fisheries Act 1975 s 27A (ss 27A, 27B added by Marine and Coastal Access Act 2009 s 219(2)) (in force on 1 January 2011: SI 2010/298). It is an offence to fish for or to take fish using any means of fishing, other than an instrument for which a licence is required, without an authorisation: see Salmon and Freshwater Fisheries Act 1975 s 27B.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act

1975 ss 25, 27A apply. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

TEXT AND NOTES 26, 27--Salmon and Freshwater Fisheries Act 1975 Sch 4 Pt 1 Table further amended: Marine and Coastal Access Act 2009 s 219(3), Sch 16 para 17, Sch 22 Pt 5 (all in force by 1 January 2011: SI 2009/3345, SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iv) Licences/865. Fishing licence duties.

### **865. Fishing licence duties.**

Except where the Environment Agency<sup>1</sup> in special cases grants an exemption, there is payable in respect of a fishing licence<sup>2</sup> a duty fixed by the Agency<sup>3</sup>. Different duties may be fixed for different instruments, different periods, different parts of the area, different descriptions of fish and different classes of licence holder<sup>4</sup>.

At least one month<sup>5</sup> before fixing or altering a duty for the use of any instrument in any part of its area, the Agency, except where the duty is payable in respect of a temporary licence, must publish notice of its intention to do so in one or more newspapers circulating in that area and such notice must set out the amount of any duty proposed to be fixed or altered<sup>6</sup>. If during the month immediately following the publication of the notice a written objection to the proposed duty is made to the Secretary of State or the Welsh Ministers<sup>7</sup> by any interested person, the Agency must not fix or alter the duty without his or their approval<sup>8</sup>. With or without a local inquiry, the Secretary of State or the Welsh Ministers may refuse to approve any duty submitted by the Agency for approval, or may approve the duty with or without modifications<sup>9</sup>. If so directed by the Secretary of State or Welsh Ministers, the Agency must cause notice of any proposed modification to be given in accordance with the direction<sup>10</sup>. Where the fixing or alteration of any duty takes effect at any time, no alteration or further alteration of that duty may take effect within the period of 12 months beginning with that time<sup>11</sup>.

The Agency may charge in respect of a temporary licence<sup>12</sup> a duty less than that fixed for the use of the same instrument under the provisions described above<sup>13</sup>. In respect of a general licence<sup>14</sup> there is payable such a sum as may be agreed between the Agency and the licensee<sup>15</sup>.

The production of a printed copy of a statement purporting to be issued by the Agency as to a licence duty fixed and, if it is the case, approved by the Secretary of State or the Welsh Ministers is prima facie evidence that the licence duty was fixed or approved as there mentioned and of the amount of the duty, and no proof need be given of the handwriting or official position of any person purporting to sign the statement<sup>16</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 Ie a licence granted for the purposes of the Salmon and Freshwater Fisheries Act 1975 s 25 (as amended): see s 25(2); and para 864 ante.

3 Ibid s 25(8), Sch 2 para 1(1), (2) (Sch 2 amended by the Environment Act 1995 s 105, Sch 15 para 2). Where particulars of a servant or agent are entered on a licence, a fee of 20p for every name and address entered is payable and must be sent, within 24 hours of the making of the entry, to the water authority: Salmon and Freshwater Fisheries Act 1975 Sch 2 para 11 (as so amended). As to the entry of names and addresses of servants and agents see para 864 ante. Where the name and address of a servant or agent is removed from or inserted in a licence a fee of 20p is payable for each removal or insertion and, where a name and address is

inserted in substitution for a name and address removed, for each substitution: Sch 2 para 12. See para 864 ante.

4 Ibid Sch 2 para 2 (as amended: see note 3 supra).

5 le at least one calendar month: see the Interpretation Act 1978 Sch 1, Sch 2 paras 4(1), 5(6); and TIME vol 97 (2010) PARA 309.

6 Salmon and Freshwater Fisheries Act 1975 Sch 2 para 3 (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (13); and further amended (see note 3 supra)). As to the duty on temporary licences see the text to notes 14-15 infra. As to what is a newspaper circulating in the area see *Re Southern Builders and Contractors (London) Ltd* (1961) Times, 10 October; cf *R v Westminster Betting Licensing Committee, ex p Governors of Peabody Donation Fund* [1963] 2 QB 750, [1963] 2 All ER 544, DC.

7 As to the Secretary of State and the Welsh Ministers see para 846 ante.

8 Salmon and Freshwater Fisheries Act 1975 Sch 2 para 4 (as amended: see note 3 supra).

9 Ibid Sch 2 para 5 (as amended: see note 3 supra).

10 Ibid Sch 2 para 5 (as amended: see note 3 supra).

11 Ibid Sch 2 para 6 (substituted by the Water Act 1989 Sch 17 para 7(1), (13)).

12 As to temporary licences see para 864 ante.

13 Salmon and Freshwater Fisheries Act 1975 Sch 2 para 7 (as amended: see note 3 supra). The provisions referred to are those of Sch 2 paras 1-6: see the text and notes 1-11 supra.

14 As to general licences see para 864 ante.

15 Salmon and Freshwater Fisheries Act 1975 Sch 2 para 8 (as amended: see note 3 supra).

16 Ibid Sch 2 para 18 (as amended: see note 3 supra).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **865 Fishing licence duties**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 Sch 2 further amended and repealed in part: Marine and Coastal Access Act 2009 s 217(6), Sch 16 para 16, Sch 22 Pt 5 (all in force by 1 January 2011: SI 2009/3345, SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iv) Licences/866. Production of fishing licence.

## 866. Production of fishing licence.

A water bailiff<sup>1</sup> or other officer of the Environment Agency<sup>2</sup> or any constable<sup>3</sup> may require any person who is fishing, or whom he reasonably suspects of being about to fish or to have fished within the preceding half hour in any area, to produce his licence<sup>4</sup> or other authority to fish and to state his name and address<sup>5</sup>. A water bailiff or other officer of the Environment Agency may also require a person to state his name and address if he has reason to believe he has committed a fixed penalty offence<sup>6</sup>. A person holding a fishing licence for any area may, on production of his licence, require any person who is fishing in that area to produce his licence or other authority to fish and to state his name and address<sup>7</sup>.

If any person required under these provisions to produce his licence or other authority or to state his name and address fails to do so, he is guilty of an offence<sup>8</sup>. He cannot, however, be convicted of the offence of failing to produce if, within seven days after the production of his licence was so required, he produces the licence or other authority at the appropriate office of the Environment Agency<sup>9</sup>.

1 As to water bailiffs see para 934 et seq post.

2 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

3 As to constables see POLICE vol 36(1) (2007 Reissue) para 101 et seq.

4 As to licences see para 864 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 35(1) (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (9); and the Environment Act 1995 s 104(2)).

6 Salmon and Freshwater Fisheries Act 1975 s 35(1A) (added by the Environment Act 1995 s 104(3)). As to fixed penalty offences see para 925 post.

7 Salmon and Freshwater Fisheries Act 1975 s 35(2) (amended by the Water Act 1989 Sch 17 para 7(1), (9)).

8 Salmon and Freshwater Fisheries Act 1975 s 35(3). As to the penalties and proceedings for offences see para 924 et seq post.

9 Ibid s 35(3) (amended by the Water Act 1989 Sch 17 para 7(1), (9); and the Environment Act 1995 s 105, Sch 15 para 18(1)). 'The appropriate office of the Agency' means: (1) in a case where the person requiring the production of the licence or other authority specifies a particular office of the Agency for its production, that office; and (2) in any other case, any office of the Agency: Salmon and Freshwater Fisheries Act 1975 s 35(4) (added by the Water Act 1989 Sch 17 para 7(1), (9); and substituted by the Environment Act 1995 Sch 15 para 18(2)). For these purposes where a licence or other authority which any person has been required to produce is sent by post to an office of the Agency that licence or other authority is to be treated as produced by that person at that office: Salmon and Freshwater Fisheries Act 1975 s 35(4) (as so added and substituted).

## UPDATE

### 844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## 866 Production of fishing licence

TEXT AND NOTES 5, 7, 9--Salmon and Freshwater Fisheries Act 1975 s 35(1) further amended, s 35(2) repealed; Water Act 1989 Sch 17 para 7(9) partly repealed: Marine and Coastal Access Act 2009 s 220(7), (8), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(iv) Licences/867. Limitation of fishing licences.

### **867. Limitation of fishing licences.**

The Environment Agency<sup>1</sup> may (in relation to any area specified in the order) by order confirmed by the Secretary of State or, in relation to Wales, by the Welsh Ministers<sup>2</sup> limit, for a period not exceeding ten years from the coming into operation of the order, the number of fishing licences<sup>3</sup> to be issued in any year for fishing in that area for salmon<sup>4</sup> or trout<sup>5</sup> other than rainbow trout with any instrument so specified other than rod and line<sup>6</sup>. The Agency may also by such an order provide for the selection of the applicants to whom such licences are to be issued where the number of applicants exceeds the number of licences which may be granted<sup>7</sup>.

Where the Secretary of State proposes or the Welsh Ministers propose to confirm such an order he or they must require the Agency to publish the order and notice of intention to confirm it in the required manner, together with a notification that, within a period specified in the requirement, written objections to the order may be made to the Secretary of State or the Welsh Ministers<sup>8</sup>. The Secretary of State or the Welsh Ministers must consider any such objections received within the specified period<sup>9</sup>. If the number of licences as proposed to be limited by the order is less than the number of licences issued in any of the three years preceding the year in which the order is to come into operation, and any such objection is made by any person who has during each of the two preceding years held a licence of the same description<sup>10</sup>, the Secretary of State or the Welsh Ministers must cause a local inquiry to be held before confirming the order<sup>11</sup>. They must not confirm an order unless satisfied that the terms of the order relating to the selection of applicants for licences are such as to secure that any person who during the preceding year held a licence to use an instrument of any description, and who is dependent on fishing for his livelihood, will be able to obtain a licence to use an instrument of that description<sup>12</sup>. The Secretary of State or the Welsh Ministers may, with the Agency's consent, vary an order which has been submitted before confirming it; and he or they may require the Agency to publish the terms of the proposed variation in such manner, if any, as may be specified<sup>13</sup>. An order may be revoked by the Secretary of State or the Welsh Ministers, or by an order made by the Agency and confirmed by the Secretary of State or the Welsh Ministers<sup>14</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 As to fishing licences see para 864 ante.

4 For the meaning of 'salmon' see para 848 note 1 ante.

5 For the meaning of 'trout' see para 848 note 2 ante.

6 Salmon and Freshwater Fisheries Act 1975 s 26(1)(a) (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (6); and the Environment Act 1995 s 105, Sch 15 para 2). For the meaning of 'rod and line' see para 848 note 6 ante. Such orders are of local effect only and are not recorded in this work.



7 Salmon and Freshwater Fisheries Act 1975 s 26(1)(b). The Environment Agency may place a limit on the number of licences it is prepared to grant: see *R v Minister of Agriculture, Food and Fisheries, ex p Graham* (1998) Times, 16 April.

8 Salmon and Freshwater Fisheries Act 1975 s 26(2) (amended by the Environment Act 1995 Sch 15 para 2).

9 Salmon and Freshwater Fisheries Act 1975 s 26(3).

10 le of the same description as the licences which it is proposed so to limit in number: *ibid* s 26(3).

11 *Ibid* s 26(3)(a), (b).

12 *Ibid* s 26(4). This is expressed to be subject to s 26(5), which provides that if it appears to the Secretary of State or the Welsh Ministers that the operation of s 26(4) would be detrimental to the conservation of any fishery, he or they may direct that s 26(4) is to have effect in its application to that fishery with the substitution for the words 'the year' of the words 'the two years' or, if special circumstances justify it, 'the three years': s 26(5).

13 *Ibid* s 26(6) (amended by the Environment Act 1995 Sch 15 para 2).

14 Salmon and Freshwater Fisheries Act 1975 s 26(7).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **867 Limitation of fishing licences**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 26 further amended: Marine and Coastal Access Act 2009 s 218, Sch 16 para 10 (in force on 1 January 2011: 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/A. IN GENERAL/868. Close season generally.

## **(v) Close Seasons**

### **A. IN GENERAL**

#### **868. Close season generally.**

For the protection of fish, Parliament has prohibited their capture (subject to exceptions<sup>1</sup>) during certain seasons of the year<sup>2</sup>, known as the annual close season and the weekly close time<sup>3</sup>.

Such periods may be fixed by byelaws made by the Environment Agency<sup>4</sup> who, in the case of fishing by any method for salmon<sup>5</sup> and trout<sup>6</sup> other than rainbow trout are under a duty to make byelaws fixing the annual close season and weekly close time<sup>7</sup>. In the case of rainbow trout and freshwater fish<sup>8</sup> the Environment Agency may make byelaws to fix or alter the annual close season or dispense with it<sup>9</sup>.

The Environment Agency also has power to prohibit or regulate fishing with rod and line between the expiration of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning<sup>10</sup>.

1 As to exceptions in respect of acts done for the artificial propagation of fish or for scientific purposes see eg paras 848 ante, 869 post.

2 See para 869 et seq post.

3 As to the close season see paras 869-871 post; and as to the weekly close time see para 874 post.

4 See paras 869-870, 874 post. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

5 For the meaning of 'salmon' see para 848 note 1 ante.

6 For the meaning of 'trout' see para 848 note 2 ante.

7 Salmon and Freshwater Fisheries Act 1975 s 19(1), Sch 1 para 1; and see para 932 post.

8 For the meaning of 'freshwater fish' see para 848 note 3 ante.

9 See the Water Resources Act 1991 s 210, Sch 25 para 6(3)(b); and para 932 post.

10 Ibid Sch 25 para 6(3)(d). For the meanings of 'sunset' and 'sunrise' see para 841 note 5 ante.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

### **868 Close season generally**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/B. ANNUAL CLOSE SEASON/869. Annual close season for salmon.

## ***B. ANNUAL CLOSE SEASON***

### **869. Annual close season for salmon.**

The Environment Agency<sup>1</sup> is under a statutory duty to make byelaws<sup>2</sup> fixing, for the parts of the area in relation to which the Agency carries out its functions under the Salmon and Freshwater Fisheries Act 1975, the annual close season for fishing by any method for salmon<sup>3</sup>.

Subject to any byelaws<sup>4</sup>, the annual close season for salmon is the period between 31 August and the following 1 February<sup>5</sup>. The minimum close season for salmon is 153 days<sup>6</sup>. Subject to any byelaws<sup>7</sup> the salmon close season for rods is the period between 31 October and the following 1 February<sup>8</sup>. The minimum close season for fishing for salmon with rod and line is 92 days<sup>9</sup>. Subject to any byelaws<sup>10</sup> the salmon close season for putts and putchers is the period between 31 August and the following 1 May<sup>11</sup>. The minimum close season for fishing for salmon with putts and putchers is 242 days<sup>12</sup>.

Any person who fishes for, takes, kills or attempts to take or kill salmon (except with a rod and line or putts and putchers) during the annual close season, or with a rod and line during the close season for rods, or with putts or putchers during the close season for putts and putchers, is guilty of an offence<sup>13</sup>, which is triable summarily, the offender being liable on conviction to a maximum fine of level 4 on the standard scale for a first or subsequent offence<sup>14</sup>. However, a person is not guilty of an offence under these provisions in respect of any act done for the purpose of the artificial propagation of fish, or for some scientific purpose, if he has obtained the previous written permission of the Environment Agency<sup>15</sup>.

There are statutory provisions requiring the removal of fixed engines for taking salmon during the annual close season and on placing obstructions in rivers for the purpose of deterring salmon from passing up during the annual close season<sup>16</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 As to byelaws generally see paras 932-933 post.

3 Salmon and Freshwater Fisheries Act 1975 s 19(1), Sch 1 para 1. This provision is expressed to be subject to Sch 1 para 3 (see the text and notes 6-12 infra). For the meaning of 'salmon' see para 848 note 1 ante. As to the weekly close time see para 874 post.

4 Ie subject to any byelaws under the Salmon and Freshwater Fisheries Act 1975: see Sch 1 para 6.

5 Ibid Sch 1 para 6(a)(i). The duration of the close seasons mentioned in Sch 1 is ascertained without including the dates mentioned in the text.

6 Ibid Sch 1 para 3, Table, head 1.

7 See note 4 supra.

8 Salmon and Freshwater Fisheries Act 1975 Sch 1 para 6(a)(ii).

9 Ibid Sch 1 para 3, Table, head 2. For the meaning of 'rod and line' see para 848 note 6 ante.

10 See note 4 supra.

11 Salmon and Freshwater Fisheries Act 1975 Sch 1 para 6(a)(iii). As to putts and putchers see para 855 ante.

12 Ibid Sch 1 para 3, Table, head 3.

13 Ibid s 19(2). This provision is expressed to be subject to s 19(3) (see the text to note 16 infra). As to obstructions in the annual close season see para 873 post.

14 See ibid s 37, Sch 4 para 1(1) Table (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see para 841 note 4 ante. As to proceedings for offences see para 924 et seq post.

15 Salmon and Freshwater Fisheries Act 1975 s 19(3) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2).

16 See the Salmon and Freshwater Fisheries Act 1975 s 20(1)-(3); and para 873 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/B. ANNUAL CLOSE SEASON/870. Annual close season for trout.

### **870. Annual close season for trout.**

The Environment Agency<sup>1</sup> is under a statutory duty to make byelaws<sup>2</sup> fixing for the parts of the area in relation to which it carries out its functions under the Salmon and Freshwater Fisheries Act 1975 the annual close season for fishing by any method for trout other than rainbow trout<sup>3</sup>.

Subject to any byelaws<sup>4</sup>, the annual close season for trout is the period between 31 August and the following 1 March<sup>5</sup>. The minimum close season for trout is 181 days<sup>6</sup>. Subject to any byelaws<sup>7</sup>, the annual trout close season for rod and line<sup>8</sup> is the period between 30 September and the following 1 March<sup>9</sup>. The minimum close season for fishing for trout with rod and line is 153 days<sup>10</sup>. The minimum close season for fishing for trout with putts and putchers is 242 days<sup>11</sup>.

Any person who fishes for, takes, kills or attempts to take or kill trout other than rainbow trout, except with a rod and line, during the annual close season for trout or with a rod and line during the annual trout close season for rod and line, is guilty of an offence<sup>12</sup>. The offence is triable

summarily and the offender is liable on conviction to a maximum fine at level 4 on the standard scale for first or subsequent offences<sup>13</sup>. However, a person is not guilty of an offence under these provisions in respect of any act done for the purpose of the artificial propagation of fish, or for some scientific purpose, if he has obtained the previous written permission of the Environment Agency<sup>14</sup>.

There are statutory provisions requiring the removal of fixed engines for taking salmon during the annual close season and on placing obstructions in rivers for the purpose of deterring migratory trout from passing up during the annual close season<sup>15</sup>.

- 1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.
- 2 As to byelaws generally see paras 932-933 post.
- 3 Salmon and Freshwater Fisheries Act 1975 s 19(1), Sch 1 para 1. This provision is expressed to be subject to Sch 1 para 3 (see the text and notes 6-11 infra). For the meaning of 'trout' see para 848 note 2 ante. As to the annual close season for rainbow trout see para 871 post. As to the weekly close time see para 874 post.
- 4 Ie subject to any byelaws under the Salmon and Freshwater Fisheries Act 1975: see Sch 1 para 6.
- 5 Ibid Sch 1 para 6(b)(i).
- 6 Ibid Sch 1 para 3, Table, head 5.
- 7 See note 4 supra.
- 8 For the meaning of 'rod and line' see para 848 note 6 ante.
- 9 Salmon and Freshwater Fisheries Act 1975 Sch 1 para 6(b)(ii).
- 10 Ibid Sch 1 para 3, Table, head 6.
- 11 Ibid Sch 1 para 3, Table, head 3. As to putts and putchers see para 855 ante.
- 12 Ibid s 19(4). This provision is expressed to be subject to s 19(5) (see the text and note 14 infra).
- 13 Ibid s 37, Sch 4 para 1(1), Table. As to the standard scale see para 841 note 4 ante. As to proceedings for offences see para 924 et seq post.
- 14 Ibid s 19(5) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).
- 15 See the Salmon and Freshwater Fisheries Act 1975 s 20(1)-(3); and para 873 post.

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/B. ANNUAL CLOSE SEASON/871. Annual close season for freshwater fish and rainbow trout.

### **871. Annual close season for freshwater fish and rainbow trout.**

The Environment Agency<sup>1</sup> has power by byelaw<sup>2</sup> to fix or alter a close season for freshwater fish<sup>3</sup> or rainbow trout<sup>4</sup>. The Agency may also by byelaw dispense with a close season for freshwater fish or rainbow trout<sup>5</sup>, but, subject to this power, the minimum close season for freshwater fish or rainbow trout is 93 days<sup>6</sup>. If byelaws neither specify nor dispense with an annual close season for freshwater fish, the annual close season for such fish is the period between 14 March and 16 June<sup>7</sup>. The annual close season for rainbow trout for any waters is that fixed for those waters by byelaws<sup>8</sup>.

Any person who, during the annual close season for freshwater fish, fishes for, takes, kills or attempts to take or kill any freshwater fish in any inland water<sup>9</sup>, or fishes for eels<sup>10</sup> by means of a rod and line<sup>11</sup> in any such water, is guilty of an offence<sup>12</sup>. Any person who, during the annual close season for rainbow trout, fishes for, takes, kills or attempts to take or kill, any rainbow trout in any inland water, or fishes for eels by means of a rod and line in any such water, is guilty of an offence<sup>13</sup>. The above offences are triable summarily and the offender is liable on conviction to a maximum fine at level 4 on the standard scale for a first or subsequent offence<sup>14</sup>.

However, the provisions described above do not apply<sup>15</sup>: (1) to the removal by the owner<sup>16</sup> or occupier<sup>17</sup>, from any several fishery<sup>18</sup> where salmon<sup>19</sup> or trout<sup>20</sup> are specially preserved<sup>21</sup>, of any eels, freshwater fish or rainbow trout not so preserved<sup>22</sup>; (2) to any person fishing with rod and line in any such fishery with the previous written permission of its owner or occupier<sup>23</sup>; (3) to any person fishing with rod and line for eels in any waters in which such fishing is authorised by a byelaw<sup>24</sup>; (4) to the taking of freshwater fish or rainbow trout for scientific purposes<sup>25</sup>; or (5) to the taking of freshwater fish for bait in a several fishery with the written permission of its owner or occupier<sup>26</sup> or in any other fishery unless the taking would contravene a byelaw<sup>27</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 Ie byelaws under the Salmon and Freshwater Fisheries Act 1975: see paras 932-933 post.

3 For the meaning of 'freshwater fish' see para 848 note 3 ante.

4 Water Resources Act 1991 Sch 25 para 6(3)(a).

5 Ibid Sch 25 para 6(3)(b).

6 Salmon and Freshwater Fisheries Act 1975 Sch 1 para 3, Table, head 8.

7 Ibid Sch 1 para 4. The duration of the close seasons mentioned in Sch 1 is ascertained without including the dates mentioned in the text.

8 Ibid Sch 1 para 5.

9 For the meaning of 'inland water' see para 854 note 3 ante.

- 10 As to the meaning of 'eels' see para 848 note 27 ante.
- 11 For the meaning of 'rod and line' see para 848 note 6 ante.
- 12 Salmon and Freshwater Fisheries Act 1975 s 19(6). This provision is expressed to be subject to s 19(8) (see the text and notes 22-27 infra).
- 13 Ibid s 19(7). This provision is expressed to be subject to s 19(8) (see the text and notes 22-27 infra).
- 14 Ibid s 37, Sch 4 para 1(1), Table. As to proceedings for offences see para 924 et seq post.
- 15 Ibid s 19(8) contains defences to the offences set out in s 19(6), (7): see the text and notes 16-27 infra.
- 16 As to the meaning of 'owner' see para 861 note 4 ante.
- 17 As to the meaning of 'occupier' see para 861 note 5 ante.
- 18 As to several fisheries see para 805 ante.
- 19 For the meaning of 'salmon' see para 848 note 1 ante.
- 20 For the meaning of 'trout' see para 848 note 2 ante.
- 21 As to the meaning of 'specially preserved' see *Thames Water Authority v Homewood* (1981) Times, 25 November (where it was suggested that the court should look 'at all the activities taking place in the water throughout the year' and decide whether it was a genuine trout fishery or just an attempt to create that impression).
- 22 Salmon and Freshwater Fisheries Act 1975 s 19(8)(a).
- 23 Ibid s 19(8)(b).
- 24 Ibid s 19(8)(c).
- 25 Ibid s 19(8)(d).
- 26 Ibid s 19(8)(e)(i).
- 27 Ibid s 19(8)(e)(ii).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

### **871 Annual close season for freshwater fish and rainbow trout**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 4, 5--Water Resources Act 1991 Sch 25 para 6(3) repealed: Marine and Coastal Access Act 2009 s 224(7), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/B. ANNUAL CLOSE SEASON/872. Eel baskets.

## **872. Eel baskets.**

Any person who before 25 June in any year hangs, fixes or uses in any waters frequented by salmon<sup>1</sup> or migratory trout<sup>2</sup> any baskets, nets, traps<sup>3</sup> or devices for catching eels<sup>4</sup>, or places in any inland water<sup>5</sup> any device whatsoever to catch or obstruct any fish descending the river<sup>6</sup> is guilty of an offence<sup>7</sup>. Any person who at any time places upon the apron of any weir<sup>8</sup> any basket, trap or device for taking fish, except wheels or leaps for taking lampreys between 1 August and the following 1 March, is guilty of an offence<sup>9</sup>. These offences are triable summarily and the offender is liable on conviction to a maximum fine at level 4 on the standard scale<sup>10</sup>.

These provisions do not, however, prohibit the use of eel baskets not exceeding in any part ten inches in diameter so as to be fished with bait, and not used at any dam<sup>11</sup> or other obstruction or in any conduit or artificial channel by which water is deviated from a river<sup>12</sup>; nor do they prohibit any device for taking eels in such places during such time and subject to such conditions as may be authorised by the Environment Agency<sup>13</sup>.

1 For the meaning of 'salmon' see para 848 note 1 ante.

2 For the meaning of 'migratory trout' see para 848 note 2 ante.

3 A weir which operates to catch fish when a floodgate is raised may be a device or trap: *Briggs v Swanwick* (1883) 10 QBD 510, DC.

4 As to the meaning of 'eels' see para 848 note 27 ante.

5 For the meaning of 'inland water' see para 854 note 3 ante.

6 As to the meaning of 'river' see para 850 note 4 ante.

7 Salmon and Freshwater Fisheries Act 1975 s 21(1)(a). This provision is expressed to be subject to s 21(2) (see the text and notes 12-13 infra).

8 As to what may constitute the apron of a weir see *Maw v Holloway* [1914] 3 KB 594, DC. See also *Briggs v Swanwick* (1883) 10 QBD 510, DC.

9 Salmon and Freshwater Fisheries Act 1975 s 21(1)(b). This provision is expressed to be subject to s 21(2) (see the text and notes 12-13 infra).

10 Ibid s 37, Sch 4 para 1(1), Table (entry amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see para 841 note 4 ante.

11 For the meaning of 'dam' see para 848 note 8 ante.

12 Salmon and Freshwater Fisheries Act 1975 s 21(2)(a).



13 Ibid s 21(2)(b) (amended by the Water Act 1989 ss 141, 190(3), Sch 17 para 7(1), (4), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

## **UPDATE**

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/B. ANNUAL CLOSE SEASON/873. Obstructions in the annual close season.

### **873. Obstructions in the annual close season.**

Immediately after the commencement of the annual close season<sup>1</sup> the occupier<sup>2</sup> of any fixed engine<sup>3</sup> for taking salmon<sup>4</sup> or migratory trout<sup>5</sup> must cause it to be removed or rendered incapable of taking them or obstructing their passage<sup>6</sup>. Where in pursuance of this requirement a fixed engine has been rendered incapable (whether by removal or otherwise) of taking salmon or migratory trout or obstructing their passage, its occupier must not replace it or otherwise render it capable of taking them or obstructing their passage until the end of the close season<sup>7</sup>. If any person fails to comply with either of the above requirements he is guilty of an offence<sup>8</sup>. If any person during the annual close season places any obstruction, uses any contrivance or does any act for the purpose of deterring salmon or migratory trout from passing up a river<sup>9</sup>, he is guilty of an offence<sup>10</sup>; but it is a defence for a person to show that he placed the obstruction, used the contrivance or did the acts in question in the course of legally fishing for fish other than salmon or migratory trout<sup>11</sup>.

1 As to the annual close season for salmon see para 869 ante. As to the annual close season for trout see para 870 ante.

2 As to the meaning of 'occupier' see para 861 note 5 ante.

3 For the meaning of 'fixed engine' see para 848 note 10 ante. As to fixed engines generally see para 854 ante.

4 For the meaning of 'salmon' see para 848 note 1 ante.

5 For the meaning of 'migratory trout' see para 848 note 2 ante. In s 20 'migratory trout' does not include rainbow trout: Salmon and Freshwater Fisheries Act 1975 s 20(6).

6 Ibid s 20(1). This provision is expressed to be subject to s 20(4), (5) (see the text and notes 8-11 infra). The provisions of s 20(1) also apply to the weekly close time: see para 875 post.

7 Ibid s 20(2).

8 Ibid s 20(3)(a). A person found guilty of this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 37, Sch 4 para 1(2) (amended by virtue of the Criminal Justice Act 1982 s 46). The provisions of the Salmon and Freshwater Fisheries Act 1975 s 20(1)-(3) described above only apply to putts and putchers in relation to the close season for putts and putchers: s 20(4). As to putts and putchers see para 855 ante. As to the close season for fishing for salmon and trout with putts and putchers see paras 869-870 ante.

9 As to the meaning of 'river' see para 850 note 4 ante.

10 Salmon and Freshwater Fisheries Act 1975 s 20(3)(b). As to proceedings for offences see para 924 post.

11 Ibid s 20(5).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/C. WEEKLY CLOSE TIME/874. Weekly close time.

## **C. WEEKLY CLOSE TIME**

### **874. Weekly close time.**

The Environment Agency<sup>1</sup> is under a statutory duty to make byelaws<sup>2</sup> fixing for the parts of the area in relation to which it carries out its functions the weekly close time for fishing by any method for salmon<sup>3</sup> and trout<sup>4</sup> other than rainbow trout<sup>5</sup>.

Subject to any byelaws<sup>6</sup>, the weekly close time for salmon is the period between 6 am on Saturday and 6 am on the following Monday<sup>7</sup>. The minimum weekly close time for salmon is 42 hours<sup>8</sup>. Subject to any byelaws, the weekly close time for trout is the period between 6 am on

Saturday and 6 am on the following Monday<sup>9</sup>. The minimum weekly close time for trout is 42 hours<sup>10</sup>.

Any person who fishes for, takes, kills or attempts to take or kill salmon except with a rod and line<sup>11</sup> or putts and putchers<sup>12</sup> during the weekly close time is guilty of an offence<sup>13</sup>. Any person who fishes for, takes, kills or attempts to take or kill trout, other than rainbow trout, except with a rod and line during the weekly close time for trout is guilty of an offence<sup>14</sup>. These offences are triable summarily and the offender is liable on conviction to a maximum fine at level 4 on the standard scale<sup>15</sup>.

However, a person is not guilty of an offence under these provisions in respect of any act done for the purpose of the artificial propagation of fish, or for some scientific purpose or (in the case of breaches of the weekly close time for trout) for the purpose of the restocking of waters, if he has obtained the previous written permission of the Environment Agency<sup>16</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 As to byelaws generally see paras 932-933 post.

3 For the meaning of 'salmon' see para 848 note 1 ante.

4 For the meaning of 'trout' see para 848 note 2 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 19(1), Sch 1 para 1 (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (12); and the Environment Act 1995 s 105, Sch 15 paras 2, 22).

6 Is subject to any byelaws under the Salmon and Freshwater Fisheries Act 1975 or the Salmon and Freshwater Fisheries Act 1923: see para 869 ante.

7 Salmon and Freshwater Fisheries Act 1975 Sch 1 para 6(a)(iv).

8 Ibid Sch 1 para 3, Table, head 4.

9 Ibid Sch 1 para 6(b)(iii).

10 Ibid Sch 1 para 3, Table, head 7.

11 For the meaning of 'rod and line' see para 848 note 6 ante.

12 As to putts and putchers, and the prohibition on their use during the annual close season for putts and putchers see para 855 ante.

13 Salmon and Freshwater Fisheries Act 1975 s 19(2)(a). This provision is expressed to be subject to s 19(3) (see the text and note 16 infra). As to obstructions in the weekly close time see para 875 post.

14 Ibid s 19(4)(a). This provision is expressed to be subject to s 19(5) (see the text and note 16 infra).

15 Ibid s 37, Sch 4 para 1(1), Table. As to proceedings for offences see para 924 et seq post.

16 Ibid s 19(3), (5) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5,

6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(v) Close Seasons/C. WEEKLY CLOSE TIME/875. Obstructions in weekly close time.

### **875. Obstructions in weekly close time.**

Immediately after the commencement of the weekly close time<sup>1</sup> the occupier<sup>2</sup> of any fixed engine<sup>3</sup> for taking salmon<sup>4</sup> or migratory trout<sup>5</sup> must cause it to be removed or rendered incapable of taking them or obstructing their passage<sup>6</sup>. Where in pursuance of this requirement a fixed engine has been rendered incapable (whether by removal or otherwise) of taking salmon or migratory trout or obstructing their passage, its occupier must not replace it or otherwise render it capable of taking them or obstructing their passage until the end of the close time<sup>7</sup>. If any person fails to comply with either of these requirements, he is guilty of an offence<sup>8</sup>. If any person during the weekly close time places any obstruction, uses any contrivance or does any act for the purpose of deterring salmon or migratory trout from passing up a river<sup>9</sup> he is guilty of an offence<sup>10</sup>; but it is a defence for a person charged under this provision to show that he placed the obstruction, used the contrivance or did the acts in question in the course of legally fishing for fish other than salmon or migratory trout<sup>11</sup>.

1 As to the weekly close time see para 874 ante.

2 As to the meaning of 'occupier' see para 861 note 5 ante.

3 For the meaning of 'fixed engine' see para 848 note 10 ante. As to fixed engines generally see para 854 ante.

4 For the meaning of 'salmon' see para 848 note 1 ante.

5 For the meaning of 'migratory trout' see para 848 note 2 ante. 'Migratory trout' in this context does not include rainbow trout: Salmon and Freshwater Fisheries Act 1975 s 20(6).

6 Ibid s 20(1). This provision is expressed to be subject to s 20(4), (5) (see the text and notes 8-11 infra). The provisions of s 20(1) also apply to the annual close season: see para 873 ante.

7 Ibid s 20(2).

8 Ibid s 20(3)(a). A person found guilty of this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: see s 37, Sch 4 para 1(2) (amended by virtue of the Criminal Justice Act 1982 s 46). The provisions of the Salmon and Freshwater Fisheries Act 1975 s 20(1)-(3) described above only apply to putts and putchers in relation to the close season for putts and putchers: s 20(4). As to putts and putchers see para 855 ante. As to the close season for fishing for salmon and trout with putts and putchers see paras 869-870 ante.

9 As to the meaning of 'river' see para 850 note 4 ante.

10 Salmon and Freshwater Fisheries Act 1975 s 20(3)(b). As to proceedings for offences see para 924 post.

11 Ibid s 20(5).

## **UPDATE**

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **868-875 Close Seasons**

Salmon and Freshwater Fisheries Act 1975 ss 19-21, Sch 1 repealed: Marine and Coastal Access Act 2009 Sch 16 paras 8, 15, Sch 22 Pt 5 (repeal of Salmon and Freshwater Fisheries Act 1975 s 20 in force 1 January 2011: SI 2010/298).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/A. SALE/876. Sale of salmon and trout.

## **(vi) Sale and Export**

### **A. SALE**

#### **876. Sale of salmon and trout.**

Any person who buys, sells, exposes for sale or has in his possession<sup>1</sup> for sale any salmon<sup>2</sup> between 31 August and the following 1 February, or any trout<sup>3</sup> other than rainbow trout between 31 August and the following 1 March, is guilty of an offence<sup>4</sup>.

These provisions do not apply to any person buying, selling or exposing for sale, or having in his possession for sale: (1) any salmon or trout which has been canned, frozen, cured, salted, pickled, dried or otherwise preserved outside the United Kingdom<sup>5</sup>; or (2) any salmon which has been canned, frozen, cured, salted, pickled, dried or otherwise preserved in the United Kingdom between 1 February and 31 August<sup>6</sup>; or (3) any trout which has been canned, frozen, cured, salted, pickled, dried or otherwise preserved within the United Kingdom between 1 March and 31 August<sup>7</sup>; or (4) any salmon or trout (other than an unclean<sup>8</sup> salmon or trout) caught outside the United Kingdom<sup>9</sup>; or (5) any salmon or trout (other than an unclean or immature<sup>10</sup> salmon or trout) caught within the United Kingdom, if its capture by any net, instrument or device was lawful at the time and in the place where it was caught<sup>11</sup>. A person is not guilty of an offence in respect of trout under these provisions for any act done for the purpose of the artificial propagation of fish, or the stocking or restocking of waters, or for some scientific purpose<sup>12</sup>.

1 Physical possession is not necessary: see *M'Attee v Hogg* (1903) 5 F 67, Ct of Sess.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meaning of 'trout' see para 848 note 2 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 22(1). The burden of proving that the provisions of s 22(1) have not been contravened lies on the person buying, selling or exposing the salmon or trout for sale, or having it in his possession for sale: s 22(4). As to the penalties and proceedings for offences see para 924 et seq post. As to the powers of seizure of authorised officers see para 879 note 7 post. Both the date of possession and the date of intended sale must fall within the prohibited period, otherwise no offence is committed: see *Birkett v McGlassons Ltd* [1957] 1 All ER 369, [1957] 1 WLR 269, DC.

As to the food standards prescribed in relation to fish products see FOOD. As to fish and shellfish hygiene see the Food Hygiene (England) Regulations 2006, SI 2006/14; the Food Hygiene (Wales) Regulations 2006, SI 2006/31; and FOOD vol 18(2) (Reissue) para 341 et seq. As to the production and placing on the market of live shellfish and fishery products see FOOD vol 18(2) (Reissue) paras 341-344. As to the labelling of fish see the Fish Labelling (England) Regulations 2003, SI 2003/461 (as amended); the Fish Labelling (Wales) Regulations 2003, SI 2003/1635 (as amended); and FOOD vol 18(2) (Reissue) para 376. As to the sale of food by weight see the Weights and Measures Act 1985; and WEIGHTS AND MEASURES. As to value added tax on the sale of fish see para 843 ante.

5 Salmon and Freshwater Fisheries Act 1975 s 22(2)(a). For the meaning of 'United Kingdom' see para 843 note 1 ante.

6 Ibid s 22(2)(b).

7 Ibid s 22(2)(c).

8 For the meaning of 'unclean' see para 858 note 5 ante.

9 Salmon and Freshwater Fisheries Act 1975 s 22(2)(d).

10 For the meaning of 'immature' see para 858 note 6 ante.

11 Salmon and Freshwater Fisheries Act 1975 s 22(2)(e).

12 Ibid s 22(3).

## UPDATE

### **844-876 History of regulation of salmon and freshwater fisheries ... Sale of salmon and trout**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **876 Sale of salmon and trout**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 22 repealed: Marine and Coastal Access Act 2009 Sch 16 para 8, Sch 22 Pt 5.

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 4--SI 2003/461 replaced: Fish Labelling (England) Regulations 2010, SI 2010/420.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/A. SALE/877. Licensing of dealer in England and Wales.

### **877. Licensing of dealer in England and Wales.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order made by statutory instrument<sup>2</sup> make provision for the purpose of prohibiting persons, in such case as may be specified in the order from dealing<sup>3</sup> in salmon<sup>4</sup> otherwise than in accordance with a licence issued in pursuance of the order of such person as may be specified<sup>5</sup> or buying salmon from a person who is not licensed to deal in salmon<sup>6</sup>. Such an order may: (1) prescribe the manner and form of an application and the sum to be paid on an application<sup>7</sup>; (2) specify circumstances for refusal and the conditions that may be incorporated<sup>8</sup>; (3) authorise the amendment, revocation or suspension of a licence<sup>9</sup>; (4) create criminal offences consisting in the contravention of, or failure to comply with, such provisions<sup>10</sup>; (5) authorise a person to determine issues arising from licences<sup>11</sup>; and (6) make provision for the enforcement of the statutory provisions<sup>12</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 An instrument made by the Secretary of State requires approval by a resolution of both Houses of Parliament (see the Salmon Act 1986 s 31(4)) and is subject to annulment in pursuance of a resolution of either House of Parliament (see s 31(5)). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162, Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 For these purposes, 'deal', in relation to salmon, includes selling any quantity of salmon, whether by way of business or otherwise, and acting on behalf of a buyer or seller of salmon: Salmon Act 1986 s 31(6).

4 For these purposes, 'salmon' means all migratory fish of the species *Salmo salar* and *Salmo trutta* and commonly known as salmon and sea trout respectively or any part of any such fish: *ibid* s 40(1).

5 *Ibid* s 31(1)(a).

6 *Ibid* s 31(1)(b). At the date at which this volume states the law no such orders had been made under s 31.

7 *Ibid* s 31(2)(a).

8 *Ibid* s 31(2)(b).

9 *Ibid* s 31(2)(c).

10 *Ibid* s 31(2)(d).

11 *Ibid* s 31(2)(e).

12 *Ibid* s 31(2)(f). An order under s 31 may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appears to the Secretary of State or the Welsh Ministers to be necessary or expedient: s 31(3).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/A. SALE/878. Handling salmon in suspicious circumstances.

### **878. Handling salmon in suspicious circumstances.**

A person is guilty of an offence if, at a time when he believes or it would be reasonable for him to suspect that a relevant offence<sup>1</sup> has at any time been committed in relation to any salmon<sup>2</sup>, he receives the salmon, or undertakes or assists in its retention, removal or disposal by or for the benefit of another person, or if he arranges to do so<sup>3</sup>. It is immaterial that his belief or the grounds for suspicion relate neither specifically to a particular offence that has been committed nor exclusively to a relevant offence or to relevant offences<sup>4</sup>. However, it is a defence to show that no relevant offence had in fact been committed in relation to the salmon in question<sup>5</sup>. A person is not guilty of an offence under the provisions described above in respect of conduct which constitutes a relevant offence in relation to any salmon or in respect of anything done in good faith for purposes connected with the prevention or detection of crime or the investigation or treatment of disease<sup>6</sup>.

1 An offence is a relevant offence in relation to a salmon if: (1) it is committed by taking, killing or landing that salmon, either in England and Wales or in Scotland; or (2) that salmon is taken, killed or landed, either in England and Wales or in Scotland, in the course of the commission of the offence: Salmon Act 1986 s 32(2). 'Offence', in relation to the taking, killing or landing of a salmon either in England and Wales or in Scotland, means an offence under the law applicable to the place where the salmon is taken, killed or landed: s 32(7).

2 For meaning of 'salmon' see para 877 note 4 ante.

3 Salmon Act 1986 s 32(1). A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both (s 32(5)(a)), or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both (s 32(5)(b)). As to the statutory maximum see para 849 note 15 ante.

4 Ibid s 32(3).

5 Ibid s 32(3).

6 Ibid s 32(4).

## UPDATE

### **878-880 Handling [fish] in suspicious circumstances ... Export of salmon and trout**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **878 Handling [fish] in suspicious circumstances**

TEXT AND NOTES--Salmon Act 1986 s 32 amended: Marine and Coastal Access Act 2009 s 229, Sch 22 Pt 5.

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon Act 1986 s 32 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.



Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/B. CONSIGNMENT AND EXPORT/879. Consignment of salmon and trout.

## ***B. CONSIGNMENT AND EXPORT***

### **879. Consignment of salmon and trout.**

A person who consigns or sends a package<sup>1</sup> containing salmon<sup>2</sup> or trout<sup>3</sup> by any common or other carrier is guilty of an offence unless the outside of the package containing it is conspicuously marked 'salmon' or 'trout' as the case may be<sup>4</sup>.

Any authorised officer<sup>5</sup> may open any package consigned or sent by a carrier, or brought to any place to be so consigned or sent, and suspected to contain salmon or trout<sup>6</sup>. If any such package is found to contain salmon or trout and is not duly marked, or if there is reasonable cause to suspect that the salmon or trout contained in any marked package is being dealt with contrary to law, an authorised officer may detain the package and its contents or any salmon or trout not packed in any package until proof is given that the fish is not being dealt with unlawfully<sup>7</sup>.

If any person refuses to allow an authorised officer to exercise the powers conferred by these provisions or obstructs such an officer in their exercise, he is guilty of an offence<sup>8</sup>.

1 'Package' is not defined for the purposes of the Salmon and Freshwater Fisheries Act 1975. It was, however, defined in the Salmon and Freshwater Fisheries Act 1892 s 6 (repealed) as including any box, basket, barrel, case, receptacle, sack, bag, wrapper or other thing in which fish is placed for the purpose of carriage.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meaning of 'trout' see para 848 note 2 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 24(1). As to the penalties and proceedings for offences see para 924 et seq post. As to the labelling of fish see the Fish Labelling (England) Regulations 2003, SI 2003/461 (as amended); the Fish Labelling (Wales) Regulations 2003, SI 2003/1635 (as amended); and FOOD vol 18(2) (Reissue) para 376.

5 'Authorised officer' means: (1) any officer of the Environment Agency; (2) any officer of a market authority acting within the area of that authority's jurisdiction; (3) any officer appointed by the Secretary of State or the Welsh Ministers; (4) any officer appointed in writing by the Fishmongers Company; or (5) any police officer: Salmon and Freshwater Fisheries Act 1975 s 41(1) (definition amended by the Water Act 1989 ss 141, 190(3), Sch 17 para 7(1), (11), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. 'Market authority' includes any corporation, local authority, body of trustees or other persons having power to maintain or regulate any market: Salmon and Freshwater Fisheries Act 1975 s 41(1). As to the Secretary of State and the Welsh Ministers see para 846 ante. 'Fishmongers Company' means the wardens and commonalty of the Mystery of Fishmongers in the City of London: s 41(1). See further CORPORATIONS vol 9(2) (2006 Reissue) para 1311.

6 Ibid s 24(2).

7 Ibid s 24(3), (4). An authorised officer may seize any salmon, trout or freshwater fish bought, sold or exposed for sale by, or in possession for sale of, any person in contravention of the Salmon and Freshwater Fisheries Act 1975: s 37, Sch 4 para 7. As to restrictions on sale see para 876 ante. If any salmon or trout detained under s 24 becomes unfit for human food before the proof required by s 24(3) is given, an authorised officer may destroy it or cause it to be destroyed: s 24(5). As to the disposal of fish seized as liable to forfeitures see para 924 post.

8 Ibid s 24(6). As to proceedings for such an offence see para 924 post.

## **UPDATE**

## **878-880 Handling [fish] in suspicious circumstances ... Export of salmon and trout**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **879 Consignment of salmon and trout**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 24 repealed: Marine and Coastal Access Act 2009 s 233(2)(c), Sch 22 Pt 5.

NOTE 4--SI 2003/461 replaced: Fish Labelling (England) Regulations 2010, SI 2010/420.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/B. CONSIGNMENT AND EXPORT/880. Export of salmon and trout.

### **880. Export of salmon and trout.**

No person may export or enter for export any unclean<sup>1</sup> salmon<sup>2</sup> or trout<sup>3</sup> or any salmon or trout caught during the time at which the sale of salmon or trout is prohibited where the salmon or trout was caught<sup>4</sup>. All salmon or trout intended for export between 31 August and the following 1 May must before shipment be entered for that purpose with the proper officer of customs and excise<sup>5</sup> at the port or place of intended export<sup>6</sup>. Any such officer may during the same period open or cause to be opened any parcel entered or intended for export, or brought to any quay, wharf or other place for that purpose, and suspected by him to contain salmon or trout, and may detain or cause to be detained any salmon or trout found in the parcel until proof is given of the salmon or trout being such as may be legally exported<sup>7</sup>.

If any salmon or trout is not entered as required by these provisions or is entered for export, or exported or brought to any quay, wharf or other place for export, contrary to these provisions, the person so failing to enter the salmon or trout or entering or exporting the salmon or trout, or bringing it for export, is guilty of an offence<sup>8</sup>, and the salmon or trout and any package containing it is deemed to be goods forfeited under the enactments relating to customs<sup>9</sup>.

The importation and exportation of certain freshwater fish alive or dead are also restricted by the legislation relating to endangered species<sup>10</sup>.

1 For the meaning of 'unclean' see para 858 note 5 ante.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meaning of 'trout' see para 848 note 2 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 23(1).

5 'Proper officer of customs and excise' is not defined in the Salmon and Freshwater Fisheries Act 1975, but see the definitions of 'proper' and 'officer' in the Customs and Excise Management Act 1979 s 1(1) (see CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) para 417).

6 Salmon and Freshwater Fisheries Act 1975 s 23(2). The burden of proving that any salmon or trout entered for export between 31 August and the following 1 May is not so entered in contravention of s 23 lies on the person entering it: s 23(5).

7 Ibid s 23(4). If the salmon or trout becomes unfit for human food before such proof is given, the officer may destroy or cause it to be destroyed: s 23(4).

8 Ibid s 23(3). As to the penalties and proceedings for offences see para 924 et seq post.

9 Ibid s 23(3). As to the legislation relating to customs see generally CUSTOMS AND EXCISE.

10 See the Endangered Species (Import and Export) Act 1976; and ANIMALS vol 2 (2008) PARA 960 et seq.

## UPDATE

### **878-880 Handling [fish] in suspicious circumstances ... Export of salmon and trout**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **880 Export of salmon and trout**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 s 23 repealed: Marine and Coastal Access Act 2009 s 233(2)(b), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vi) Sale and Export/B. CONSIGNMENT AND EXPORT/881. Export of aquaculture animals and products to other parts of the European Community.

### **881. Export of aquaculture animals and products to other parts of the European Community.**

No person may export from Great Britain<sup>1</sup> to another part of the European Community any aquaculture animal<sup>2</sup> or aquaculture product<sup>3</sup> which does not meet or is not despatched in accordance with the requirements of the relevant provisions of the European Directive concerning the animal health conditions governing the placing on the market of aquaculture animals and products<sup>4</sup> or which is not accompanied by the required documents<sup>5</sup>.

1 For the meaning of 'Great Britain' see para 843 note 1 ante.

2 For the meaning of 'aquaculture animal' see para 888 note 2 post.

3 For the meaning of 'aquaculture product' see para 888 note 3 post.

4 Ie EC Directive 91/67 (OJ L46, 19.2.91, p 1) concerning the animal health conditions governing the placing on the market of aquaculture animals and products.

5 Fish Health Regulations 1997, SI 1997/1881, reg 11(1), (2). See para 911 et seq post.

## UPDATE

## **881 Export of aquaculture animals and products to other parts of the European Community**

TEXT AND NOTES--SI 1997/1881 revoked: SI 2009/463. See Pt 3 (regs 15-21).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/A. INTRODUCTION/882. Disease control legislation and controls on importation.

### **(vii) Protection of Fisheries**

#### **A. INTRODUCTION**

#### **882. Disease control legislation and controls on importation.**

Disease control legislation reflects the cross-border implications of fish disease, and the law relating to the control of disease is necessarily interconnected with controls as to importation of fish in England and Wales<sup>1</sup>. The Diseases of Fish Act 1937 introduced measures to prevent the spreading of disease among salmon and freshwater fish in Great Britain<sup>2</sup>, and this was amended in 1983 by legislation which made further provision for preventing the spread of disease among fish, including shellfish, eels and fish bred or reared in the course of fish farming<sup>3</sup>. The Import of Live Fish (England and Wales) Act 1980 brought in measures to restrict the import, keeping or release of live non-native fish or shellfish<sup>4</sup>. The Diseases of Fish (Control) Regulations 1994<sup>5</sup> set out a framework for dealing with disease found by inspection<sup>6</sup>. The Fish Health Regulations 1997<sup>7</sup> make provision as to import, quarantine, transport and obligations as to the notification of diseases<sup>8</sup>.

1 As to statutory provisions for the control of diseases in fish see para 894 et seq post; and as to the restrictions on the importation of fish see paras 883 et seq post.

2 Diseases of Fish Act 1937, preamble. See para 894 et seq post.

3 Diseases of Fish Act 1983, preamble. As to fish farming see para 941 et seq post.

4 Import of Live Fish (England and Wales) Act 1980, preamble. See paras 885-887 post.

5 The Diseases of Fish (Control) Regulations 1994, SI 1994/1447, implement EC Council Directive 93/53 (OJ L175, 19.7.93, p 23) introducing certain minimum Community measures for the control of certain fish diseases.

6 See para 904 et seq post.

7 The Fish Health Regulations 1997, SI 1997/1881, implement EC Council Directive 91/67 (OJ L46, 19.2.91, p 1) concerning the animal health conditions governing the placing on the market of aquaculture animals and products (as amended) and EC Council Directive 95/70 (OJ No L332, 30.12.95, p 33) introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs, to the extent that they are not implemented by existing legislation.

8 See para 911 et seq post.

#### **UPDATE**

#### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **882-885 Disease control legislation and controls on importation ... Power to limit the import etc of non-native live fish and fish eggs**

Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 4 (regs 22-31) in relation to notification and control of disease outbreaks).

### **882 Disease control legislation and controls on importation**

NOTE 3--Diseases of Fish Act 1983 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

NOTE 5--SI 1994/1447 revoked: SI 2009/463.

NOTE 7--SI 1997/1881 revoked: SI 2009/463.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/B. RESTRICTION ON IMPORTS/883. Restriction on the import of live salmon, freshwater fish or eggs.

## **B. RESTRICTION ON IMPORTS**

### **883. Restriction on the import of live salmon, freshwater fish or eggs.**

The Diseases of Fish Act 1937 was enacted to assist in the prevention of the spread of disease in salmon and freshwater fish<sup>1</sup> and contains provisions restricting the importation of certain live fish and eggs.

It is unlawful to import or bring any live fish of the salmon family into Great Britain<sup>2</sup>. It is also unlawful to import or bring into Great Britain any live freshwater fish<sup>3</sup> or live eggs either of fish of the salmon family or of freshwater fish, unless the fish or eggs are consigned to a person to whom a licence has been granted<sup>4</sup> and the licence is produced at the time of the delivery of the entry<sup>5</sup> of the consignment<sup>6</sup>.

Any person who, in contravention of this provision, imports or brings or procures to be imported or brought into Great Britain any live fish or eggs of fish or, being the licence-holder, contravenes any condition subject to which the licence was granted, is guilty of an offence<sup>7</sup>.

1 See the Diseases of Fish Act 1937, preamble. 'Freshwater fish' does not include fish of the salmon family, or any kinds of fish which migrate to and from tidal waters, but includes any fish living in fresh water: s 10(1). 'Salmon' is not defined, but 'fish of the salmon family' includes all fish of whatever genus of species belonging to the family *Salmonidae*: s 10(1). 'Fish' does not include shellfish but otherwise means fish of any kind: s 10(1) (definition added by the Diseases of Fish Act 1983 s 4(1), (2)).

2 Diseases of Fish Act 1937 s 1(1) (amended by the Diseases of Fish Act 1983 s 1(1), (2)). For the meaning of 'Great Britain' see para 843 note 1 ante.

However, this does not apply to any fish of a description specified by an order made by the Secretary of State or the Welsh Ministers: Diseases of Fish Act 1937 s 1(6) (s 1(6)-(10) added by the Diseases of Fish Act 1983 s 1(1), (3)). The description of fish in the order may be made by reference to species, place of origin or any other factor: Diseases of Fish Act 1937 s 1(7) (as so added). Where such an order has effect in relation to any fish, s 1(2)-(5) (see the text and notes 3-7 *infra*) have effect as if it were a freshwater fish: s 1(8) (as so added). The power to make an order is exercisable by statutory instrument: s 1(9) (as so added). Such an order may be varied or revoked by a subsequent order: s 1(10) (as so added). In exercise of this power, the Importation of Live Fish of the Salmon Family Order 1986, SI 1986/283, was made, which provides that live fish of the salmon family which have been taken from Northern Ireland and have not at any time been in any country or territory outside Northern Ireland are excluded from the Diseases of Fish Act 1937 s 1(1).

As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

3 See note 1 *supra*.

4 Is a licence issued under the Diseases of Fish Act 1937 s 1(3): see para 884 post.

5 Is produced under the enactments for the time being in force relating to customs: *ibid* s 1(2) (amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 para 12). See CUSTOMS AND EXCISE.

6 Diseases of Fish Act 1937 s 1(2) (as amended: see note 5 *supra*).

7 *Ibid* s 1(4). As to the penalties and proceedings for offences see para 924 *et seq* post. Any police officer, officer of customs or inspector may seize fish or eggs if he has reason to believe an offence under s 1 (as amended) has been committed and detain them pending the determination of proceedings instituted under the Diseases of Fish Act 1937 or until the Secretary of State or the Welsh Ministers are satisfied that no such proceedings are likely to be instituted: s 1(4).

Notwithstanding the provisions of s 1(1)-(4), where it is shown to the satisfaction of Her Majesty's Commissioners for Revenue and Customs that any live fish or eggs of fish, of which the importation or bringing into Great Britain is prohibited or restricted by s 1 (as amended), are being imported or brought solely with a view to their re-exportation after transit through Great Britain or by way of trans-shipment, the commissioners may allow the fish or eggs to be imported or brought as if the prohibition or restriction did not apply to them: s 1(5) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to Her Majesty's Commissioners for Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 *et seq*.

## UPDATE

### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **882-885 Disease control legislation and controls on importation ... Power to limit the import etc of non-native live fish and fish eggs**

Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 4 (regs 22-31) in relation to notification and control of disease outbreaks).

### **883 Restriction on the import of live salmon, freshwater fish or eggs**

NOTE 2--Diseases of Fish Act 1983 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/B. RESTRICTION ON IMPORTS/884. Licences for imports of live freshwater fish and eggs.

#### **884. Licences for imports of live freshwater fish and eggs.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may grant a licence under the Diseases of Fish Act 1937 to any person to have consigned to him live freshwater fish<sup>2</sup> or live eggs either of fish of the salmon family<sup>3</sup> or of freshwater fish<sup>4</sup>.

A licence may be granted subject to such conditions as the Secretary of State thinks or the Welsh Ministers think fit as to the quantities or kinds of fish or eggs which may be imported or brought in under the licence, as to the disposal, transport, inspection, cleansing and disinfection of the fish or eggs and of the containers or other vessels in which they are to be transported or kept and otherwise as to the precautions which are to be taken for avoiding the spreading of disease among salmon and freshwater fish<sup>5</sup>. A licence may be granted for any period not exceeding 12 months but may be suspended or revoked at any time<sup>6</sup>.

1 As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

2 For the meaning of 'freshwater fish' see para 883 note 1 ante.

3 For the meaning of 'fish of the salmon family' see para 883 note 1 ante.

4 Diseases of Fish Act 1937 s 1(3) (amended by the Diseases of Fish Act 1983 s 5, Schedule para 1). The fee for the licence is 25p: see the Diseases of Fish Act 1937 s 1(3)(c) (amended by virtue of the Decimal Currency Act 1969 s 10(1)). The Secretary of State and the Welsh Ministers have power to make regulations prescribing the form of licence: Diseases of Fish Act 1937 s 9. The form of licence is set out in the Diseases of Fish Regulations 1984, SI 1984/455, reg 2, Sch 1 (substituted by SI 1986/538).

5 Diseases of Fish Act 1937 s 1(3)(a).

6 Ibid s 1(3)(b).

#### **UPDATE**

#### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **882-885 Disease control legislation and controls on importation ... Power to limit the import etc of non-native live fish and fish eggs**

Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 4 (regs 22-31) in relation to notification and control of disease outbreaks).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/B. RESTRICTION ON IMPORTS/885. Power to limit the import etc of non-native live fish and fish eggs.

### **885. Power to limit the import etc of non-native live fish and fish eggs.**

Without prejudice to the Diseases of Fish Act 1937<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> may by order forbid either absolutely or except under a licence<sup>3</sup>, the import into, or the keeping or the release, in any part of England and Wales of live fish<sup>4</sup>, or the live eggs<sup>5</sup> of fish, of a species which is not native to England and Wales and which in the opinion of the Secretary of State or the Welsh Ministers might compete with, displace, prey on or harm the habitat of any freshwater fish<sup>6</sup>, shellfish or salmon in England and Wales<sup>7</sup>.

Before determining whether or not to make such an order, the Secretary of State or the Welsh Ministers must consult Natural England, the Countryside Council for Wales and any other person with whom the Secretary of State considers or the Welsh Ministers consider that consultation is appropriate<sup>8</sup>.

The Secretary of State or the Welsh Ministers may, subject to such conditions as he thinks or they think fit, grant a licence to any person to import, keep or release live fish, or the live eggs of fish, of a species specified in an order<sup>9</sup>. The Secretary of State or the Welsh Ministers may revoke or vary any such licence<sup>11</sup>.

1       Ie without prejudice to the Diseases of Fish Act 1937 s 1 (as amended): see paras 883-884 ante.

2       As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Import of Live Fish (England and Wales) Act 1980 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

3       Ie a licence granted under the Import of Live Fish (England and Wales) Act 1980 s 1 (as amended).

4       'Fish' includes shellfish; 'shellfish' includes crustaceans and molluscs of any kind and any spat or spawn of shellfish: *ibid* s 4.

5       'Eggs' include milt: *ibid* s 4.

6       'Freshwater fish' means any fish living in fresh water including eels and the fry of eels, but excluding salmon; 'salmon' includes all migratory fish of the species *Salmo salar* and *Salmo trutta* commonly known as salmon and sea trout respectively: *ibid* s 4.

7       *Ibid* s 1(1). The power to make orders is exercisable by statutory instrument: see s 1(5). Such an order may, with the consent of the Treasury, authorise the making of a charge for a licence under s 1 (as amended) and must specify a maximum charge: s 1(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. In exercise of the power in s 1 (as amended), the following orders have been made: the Prohibition of Keeping of Live Fish (Crayfish) Order 1996, SI 1996/1104 (amended by SI 1996/1374); and the Prohibition of Keeping or Release of Live Fish (Specified Species) Order 1998, SI 1998/2409 (amended by SI 2003/25; SI 2003/416).

8       Import of Live Fish (England and Wales) Act 1980 s 1(2) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 8; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt 1 para 62). As to Natural England (ie the successor to the Countryside Agency and English Nature, which had



previously taken over from the Nature Conservancy Council for England) see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523.

9 Import of Live Fish (England and Wales) Act 1980 s 1(3) (amended by the Fisheries Act 1981 s 37(2)).

## UPDATE

### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **882-885 Disease control legislation and controls on importation ... Power to limit the import etc of non-native live fish and fish eggs**

Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 4 (regs 22-31) in relation to notification and control of disease outbreaks).

### **885 Power to limit the import etc of non-native live fish and fish eggs**

TEXT AND NOTES--See also EC Council Regulation 708/2007 (OJ L168, 28.6.2007, p 1) (as amended) concerning use of alien and locally absent species in aquaculture (to be applied by member states no later than 1 January 2009). The regulation introduces a framework governing aquaculture practices in relation to alien and locally absent species in order to assess and minimise the potential impact of these on aquatic habitats. Aquaculture operators wishing to introduce alien species or translocate locally absent species will first have to apply to the competent authority for a permit. For a definition of 'aquaculture' see EC Council Regulation 1198/2006 (OJ L223, 15.8.2006, p 1) art 3.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/B. RESTRICTION ON IMPORTS/886. Powers of entry and inspection in relation to import of live non-native fish.

### **886. Powers of entry and inspection in relation to import of live non-native fish.**

While an order restricting the import of live non-native fish or eggs<sup>1</sup> is in force any officer commissioned by the Commissioners for Her Majesty's Revenue and Customs<sup>2</sup> or a person duly authorised by the Secretary of State or the Welsh Ministers<sup>3</sup> may at all reasonable times, on production of his authority if so required, enter and inspect any land<sup>4</sup> occupied by a person holding a licence<sup>5</sup> and any other land upon which he has reason to believe that live fish<sup>6</sup>, or the live eggs<sup>7</sup> of fish, of the species specified in the order are being kept or may be found<sup>8</sup>.

1       le an order under the Import of Live Fish (England and Wales) Act 1980 s 1 (as amended): see para 885 ante.

2       As to the Commissioners for Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq.

3       The system of licensing is presently exercised by the Centre for Environment Fisheries and Aquaculture Science (an executive agency of the Department for Environment, Food and Rural Affairs). As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Import of Live Fish (England and Wales) Act 1980 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

4       For these purposes, 'land' includes land covered with water but does not include a dwelling house: *ibid* s 2(2).

5       le a licence granted under *ibid* s 1 (as amended): see para 885 ante.

6       For the meaning of 'fish' see para 885 note 4 ante.

7       For the meaning of 'eggs' see para 885 note 5 ante.

8       Import of Live Fish (England and Wales) Act 1980 s 2(1) (amended by the Fisheries Act 1981 ss 37(3), 46(2), Sch 5 Pt II; and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

## UPDATE

### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/B. RESTRICTION ON IMPORTS/887. Offences in relation to the import of live non-native fish.

### **887. Offences in relation to the import of live non-native fish.**

Any person who:

- (1) imports or attempts to import into, or keeps or releases, in any part of England and Wales any live fish<sup>1</sup>, or the live eggs<sup>2</sup> of fish, of a species specified in an order under the Import of Live Fish (England and Wales) Act 1980<sup>3</sup>: (a) in a case where the order forbids absolutely such import, keeping or release; (b) without having a valid licence under the Import of Live Fish (England and Wales) Act 1980 authorising such import keeping or release, in a case where the order forbids the import keeping or release except under such a licence<sup>4</sup>;
- (2) being the holder of a licence, acts in contravention of or fails to comply with any of its terms<sup>5</sup>;
- (3) obstructs any person from entering or inspecting any land in pursuance of the statutory power of entry and inspection<sup>6</sup>,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale<sup>7</sup>. However, a person is not guilty of an offence in respect of any act if he does the act for some scientific or research purpose authorised by the Secretary of State or the Welsh Ministers<sup>8</sup>.

The court by whom any person is convicted of an offence under head (1) or head (2) above may order any fish or eggs in respect of which the offence was committed to be forfeited and destroyed<sup>9</sup>. Any person who is empowered to enter land under the statutory power of inspection<sup>10</sup> may seize any fish or eggs with respect to which he has reason to believe that an offence under head (1) or head (2) above has been committed, and may detain them pending the determination of any proceedings to be instituted, or until the Secretary of State or the Welsh Ministers are satisfied that no such proceedings are likely to be instituted<sup>11</sup>.

1 For the meaning of 'fish' see para 885 note 4 ante.

2 For the meaning of 'eggs' see para 885 note 5 ante.

3 Is an order under the Import of Live Fish (England and Wales) Act 1980 s 1 (as amended): see para 885 ante.

4 Ibid s 3(1)(a) (amended by the Fisheries Act 1981 s 37(2)).

5 Import of Live Fish (England and Wales) Act 1980 s 3(1)(b).

6 Ibid s 3(1)(c). As to the power of entry and inspection under s 2 (as amended) see para 886 ante.

7 Ibid s 3(1) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see para 841 note 4 ante.

8 Import of Live Fish (England and Wales) Act 1980 s 3(2).

9 Ibid s 3(3) (amended by the Fisheries Act 1981 s 37(4)).

10 See note 6 supra.

11 Import of Live Fish (England and Wales) Act 1980 s 3(4).

## UPDATE

### **882-887 Disease control legislation and controls on importation ... Offences in relation to the import of non-native fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/888. Placing on the market of aquaculture animals and products.

## ***C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC***

### **888. Placing on the market of aquaculture animals and products.**

No person may place on the market<sup>1</sup> aquaculture animals<sup>2</sup> or aquaculture products<sup>3</sup> for breeding purposes<sup>4</sup> or aquaculture products for human consumption<sup>5</sup> unless certain criteria are met<sup>6</sup>. The requirements for aquaculture animals are:

- (1) where placing on the market involves the loading of aquaculture animals, they must not show clinical signs of disease on the day of loading<sup>7</sup>;
- (2) they must not be intended for destruction or slaughter under a scheme for the eradication of a specified disease<sup>8</sup>;
- (3) they must not come from a farm<sup>9</sup> which is subject to a prohibition which has been imposed for aquaculture animal health reasons<sup>10</sup>; and
- (4) they must not have been in contact with aquaculture animals from a farm which is subject to a prohibition which has been imposed for aquaculture animal health reasons<sup>11</sup>.

1 'Placing on the market' means holding or displaying for sale, offering for sale, selling, delivering, transferring or any other form of placing on the market in the European Community, with the exception of retail sale; and 'place on the market' is to be construed accordingly: Fish Health Regulations 1997, SI 1997/1881, reg 2.

2 Ibid reg 3(1)(a). 'Aquaculture animals' means live fish, crustaceans or molluscs coming from a farm, including those from the wild intended for a farm: reg 2.

3 'Aquaculture products' means products derived from aquaculture animals, whether intended for farming, such as eggs and gametes, or for human consumption: ibid reg 2.

4 Aquaculture products for breeding purposes must not be placed on the market unless they originate from aquaculture animals which meet the requirements set out in heads (1)-(4) in the text: see ibid reg 3(1)(b).

5 Aquaculture products for human consumption must not be placed on the market unless they originate from aquaculture animals which meet the requirements set out in head (1) in the text: see ibid reg 3(1)(c).

6 Ibid reg 3(1). The provisions of reg 3 are without prejudice to the provisions of the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, regs 4, 5, 9, 10 (see paras 905-908 post): Fish Health Regulations 1997, SI 1997/1881, reg 3(3).

7 Ibid reg 3(2)(a).

8 Ibid reg 3(2)(b). I.e a scheme for the eradication of a disease referred to in EC Directive 91/67 (OJ L46, 19.2.91, p 1) Annex A.

9 For the meaning of 'farm' see para 911 note 3 post.

10 Fish Health Regulations 1997, SI 1997/1881, reg 3(2)(c).

11 Ibid reg 3(2)(d).

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21

(placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/889. Transportation of aquaculture animals.

### **889. Transportation of aquaculture animals.**

No person may transport aquaculture animals unless<sup>1</sup>:

- (1) the duration of the journey is as short as reasonably possible<sup>2</sup>;
- (2) the means of transport has been cleaned and disinfected prior to despatch<sup>3</sup>;
- (3) if they are transported over land in water, they must be transported in such a manner that water cannot escape from the vehicle during transport<sup>4</sup>;
- (4) all reasonable steps are taken to safeguard the health of the aquaculture animals (including, if appropriate, changing the water in which they are transported)<sup>5</sup>;
- (5) the water used in the transport is only changed at an approved water station<sup>6</sup>.

1 Fish Health Regulations 1997, SI 1997/1881, reg 4(1). For the meaning of 'aquaculture animals' see para 888 note 2 ante.

2 Ibid para 4(2)(a).

3 Ibid para 4(2)(b).

4 Ibid para 4(2)(c).

5 Ibid para 4(2)(d).

6 Ibid para 4(2)(e). 'Approved water station' means a water station approved by the Secretary of State as meeting the requirements set out in Sch 5 Pt I: reg 2.

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C.

RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/890. Identification of aquaculture animals and aquaculture products.

### **890. Identification of aquaculture animals and aquaculture products.**

No person may despatch aquaculture animals or aquaculture products<sup>1</sup> unless information is provided on the container for consignment or on a label fixed to the container or on the movement document<sup>2</sup> which identifies the consignment<sup>3</sup>, that enables the farm<sup>4</sup> or the place of origin of the consignment to be traced<sup>5</sup> and enables the contents of the consignment to be linked to the movement document relating to the consignment<sup>6</sup>.

1 For the meanings of 'aquaculture animal' and 'aquaculture product' see para 888 notes 2-3 ante.

2 Fish Health Regulations 1997, SI 1997/1881, reg 5(2). A 'movement document' is a document duly completed in the appropriate form: see reg 2; EC Directive 91/67 (OJ L46, 19.2.91, p 1); EC Commission Decision 93/22 (OJ L16, 25.1.1993, p 8) laying down the model of the movement documents referred to in Article 14 of Council Directive 91/67/EEC. As to movement documents see further para 891 post.

3 See Fish Health Regulations 1997, SI 1997/1881, reg 5(1)(a).

4 For the meaning of 'farm' see para 911 note 3 post.

5 Fish Health Regulations 1997, SI 1997/1881, reg 5(1)(b).

6 Ibid reg 5(1)(c). This only applies where a movement document is required.

### **UPDATE**

#### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/891. Movement documents for live fish.

### **891. Movement documents for live fish.**

The Fish Health Regulations 1997<sup>1</sup> impose a system of controls for the movement of live fish<sup>2</sup>, eggs<sup>3</sup> or gametes<sup>4</sup> between member states of the European Community. No person may introduce into Great Britain<sup>5</sup> any specified live fish eggs or gametes<sup>6</sup> unless they are accompanied by valid movement documents in the specified form<sup>7</sup> confirming that the live fish eggs or gametes come from an area free from specified diseases<sup>8</sup> or, where a movement document does not require that they come from an area free from such disease, confirming that they fulfil the conditions set out in that movement document<sup>9</sup>.

A movement document is not valid unless it is drawn up at the place of origin of the aquaculture animals<sup>10</sup> or aquaculture products<sup>11</sup> to which it relates by the official service<sup>12</sup> of the member state in which the place of origin is situated<sup>13</sup>. The movement order must be in the language of the place of destination<sup>14</sup>, drawn up on a single sheet of paper<sup>15</sup> and made out to a single consignee<sup>16</sup>. It must not be drawn up more than 48 hours before the products in question are loaded for despatch<sup>17</sup> and the movement to which it relates must be completed within ten days of issue<sup>18</sup>. A movement order can only be used in relation to the aquaculture animals and aquaculture products for which it was issued<sup>19</sup>, and it will not be valid if it was incorrectly issued<sup>20</sup>.

1       Ie the Fish Health Regulations 1997, SI 1997/1881.

2       'Fish' means a fish at any stage of development: see *ibid* reg 2.

3       'Eggs' means fertilized ova, including eyed ova and any associated fluid, of fish, crustaceans or molluscs: *ibid* reg 2.

4       'Gametes' means sperm or unfertilized ova and any associated fluid of fish, crustaceans or molluscs: *ibid* reg 2.

5       'Great Britain' includes the territorial waters of the United Kingdom adjacent to Great Britain: *ibid* reg 2. However, for the purposes of the regulations, it specifically excludes the island of Gigha: see Sch 2. For the general meaning of 'Great Britain' see para 843 note 1 *ante*. As to territorial waters see WATER AND WATERWAYS vol 100 (2009) PARA 31.

6       Ie specified in *ibid* Sch 2.

7       *Ibid* reg 7(1), (2). For the meaning of 'movement document' see para 890 note 2 *ante*. The form is specified in Sch 2.

8       The diseases are specified in *ibid* Sch 2.

9       *Ibid* reg 7(2). Note that reg 7 does not apply to tropical fish kept permanently in aquaria: reg 7(3).

10       For the meaning of 'aquaculture animals' see para 888 note 2 *ante*.

11       For the meaning of 'aquaculture products' see para 888 note 3 *ante*.

12       'Official service' means the veterinary service or any other service of equivalent level designated by the competent authority of a member state or third country and responsible for carrying out the controls provided for in EC Council Directive 91/67 (OJ L16, 25.1.1993, p 8): Fish Health Regulations 1997, SI 1997/1881, reg 2.

13       *Ibid* reg 6(1)(a). As to 'place of origin' see EC Council Directive 91/67 (OJ L 16, 25.1.1993, p. 8-12): Fish Health Regulations 1997, SI 1997/1881, reg 6(3).

14       *Ibid* reg 6(1)(b).

15       *Ibid* reg 6(1)(c).

16       *Ibid* reg 6(1)(d).

17       *Ibid* reg 6(2)(a).

18       *Ibid* reg 6(2)(b).

19       *Ibid* reg 6(2)(c).

20       *Ibid* reg 6(2)(d).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/892. Introduction of dead fish.

## **892. Introduction of dead fish.**

No person may introduce dead fish of specified species<sup>1</sup> into Great Britain<sup>2</sup> from elsewhere in the European Community unless they comply with specified conditions<sup>3</sup>.

1 'Dead fish' includes any part of a dead fish: Fish Health Regulations 1997, SI 1997/1881, reg 2. The species are specified in Sch 3.

2 As to the meaning of 'Great Britain' for these purposes see para 891 note 5 ante.

3 Fish Health Regulations 1997, SI 1997/1881, reg 8. The conditions are specified in Sch 3.

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/C. RESTRICTION OF MOVEMENT AND SALE OF AQUACULTURE ANIMALS ETC/893. Introduction of live molluscs, eggs and gametes.

## **893. Introduction of live molluscs, eggs and gametes.**

No person may introduce into Great Britain<sup>1</sup> from elsewhere in the European Community or subsequently move within Great Britain any specified live molluscs<sup>2</sup>, eggs<sup>3</sup> or gametes<sup>4</sup> with the intention of relaying them unless they are accompanied by such valid movement documents<sup>5</sup> confirming that they come from an area free from specified diseases<sup>6</sup> or, where the movement document does not require that they come from an area free from diseases, that they fulfil the conditions set out in that movement document<sup>7</sup>. Identical restrictions relate to relaying of molluscs, eggs or gametes<sup>8</sup>. No person may relay any live molluscs, eggs or gametes between



restricted areas unless they have been authorised in writing by the Secretary of State<sup>9</sup>. No person may introduce into an approved zone<sup>10</sup> or an approved farm<sup>11</sup> any wild<sup>12</sup> fish, molluscs, crustaceans, their eggs or gametes which have been caught in the deep sea and which are to be used for breeding purposes unless those fish, molluscs, crustaceans, eggs or gametes are first placed in quarantine in suitable facilities and in appropriate conditions to be determined by the Secretary of State<sup>13</sup>.

1 For these purposes, the specified zone is the whole of Great Britain without any exclusions: see the Fish Health Regulations 1997, SI 1997/1881, Sch 4.

2 'Mollusc' means a mollusc at any stage of development: *ibid* reg 2. See note 4 *infra*.

3 For the meaning of 'eggs' see para 891 note 3 *ante*. See note 4 *infra*.

4 For the meaning of 'gametes' see para 891 note 4 *ante*. The molluscs, eggs and gametes are specified in Sch 4.

5 As to movement documents see paras 890 note 2, 891 *ante*.

6 Fish Health Regulations 1997, SI 1997/1881, reg 9(1), (2)(a). The diseases are specified in Sch 4.

7 *Ibid* reg 9(2)(b).

8 See *ibid* reg 9(3), (6).

9 *Ibid* reg 9(4). The restricted areas are described in Sch 6. The provisions of reg 9(2), (3), (4) do not apply where live molluscs, eggs or gametes are relaid in an approved storage centre: reg 9(5). As to the Secretary of State see para 846 *ante*.

10 As to approved zones see EC Council Directive 91/67 (OJ L16, 25.1.1993, p 8) Annex BI, II or III: Fish Health Regulations 1997, SI 1997/1881, reg 2.

11 As to approved farms see EC Council Directive 91/67 (OJ L16, 25.1.1993, p 8) Annex CI, II or III: Fish Health Regulations 1997, SI 1997/1881, reg 2.

12 'Wild' in relation to a fish, crustacean or mollusc means any fish, crustacean or mollusc which is not a farmed fish, crustacean or mollusc; and 'farmed' in relation to a fish, crustacean or mollusc means a fish, crustacean or mollusc at or from a farm: *ibid* reg 2.

13 *Ibid* reg 10(1). Note that reg 10 does not apply to tropical fish kept permanently in aquaria: reg 10(2).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/894. Power to designate areas in order to prevent the spread of disease.

## ***D. DISEASES OF FISH***

(A)

**894. Power to designate areas in order to prevent the spread of disease.**

In order to prevent the spread of disease in salmon and freshwater fish<sup>1</sup>, if at any time the Secretary of State or the Welsh Ministers<sup>2</sup> have reasonable grounds for suspecting that any inland or marine waters<sup>3</sup> are or may become infected waters<sup>4</sup>, he or they may by order<sup>5</sup> designate the waters and such land adjacent to them<sup>6</sup>. By the same or a subsequent order, the Secretary of State or the Welsh Ministers may to such extent as he considers or they consider it practicable and desirable for the purpose of preventing the spread of infection among fish, prohibit or regulate the taking in or out of a designated area<sup>7</sup> live fish, live eggs of fish and food stuff for fish<sup>8</sup> and may regulate the movement within the area of those things specified in the order<sup>9</sup>. Any person who is an occupier of inland waters in a designated area, or carries on the business of fish farming in any marine waters in such an area is entitled on application to a report of the evidence on which the order was made free of charge<sup>10</sup>. If any person intentionally contravenes any provision of an order made under these provisions he is guilty of an offence<sup>11</sup>.

1 For the meaning of 'freshwater fish' see para 883 note 1 ante.

2 As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

3 'Inland waters' means waters within Great Britain which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows: *ibid* s 10(1) (definition added by the Diseases of Fish Act 1983 s 4(1), (2)). 'Marine waters' means waters (other than inland waters) within the seaward limits of the territorial sea adjacent to Great Britain: Diseases of Fish Act 1937 s 10(1) (definition added by the Diseases of Fish Act 1983 s 4(1), (2)). As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

4 'Infected' means, in relation to fish, infected with any of the diseases respectively known as bacterial kidney disease (BKD), furunculosis of salmon, gyrodactyliasis caused by *Gyrodactylus salaris*, infectious haematopoietic necrosis (IHN), infectious pancreatic necrosis (IPN), infectious salmon anaemia (ISA), Koi herpesvirus disease, spring viraemia of carp (SVC), viral haemorrhagic septicaemia (VHS) and whirling disease (*Myxosoma cerebralis*): Diseases of Fish Act 1937 s 10(1) (definition substituted by the Diseases of Fish (Definition of 'Infected') Order 1984, SI 1984/301, art 2; the Diseases of Fish (Definition of 'Infected') Order 1988, SI 1988/195, art 2; and amended by the Diseases of Fish Act (Amendment of Definition of 'Infected') Order 1990, SI 1990/616, art 2; and the Diseases of Fish (England and Wales) Order 2007, SI 2007/864, art 2). The power to amend the definition of 'infected' is exercisable by statutory instrument: see the Diseases of Fish Act 1937 s 13 (substituted by the Diseases of Fish Act 1983 s 4(6)). 'Infected waters' means waters in which any of the above-mentioned diseases exists among fish, or in which the causative organisms of any of those diseases are present: Diseases of Fish Act 1937 s 10(1) (definition substituted by the Diseases of Fish Order 1973, SI 1973/2093, art 2).

5 An order must be published in the prescribed manner and may be revoked or varied by subsequent order: Diseases of Fish Act 1937 s 2(5) (s 2 substituted by the Diseases of Fish Act 1983 s 2). The Secretary of State and the Welsh Ministers have power to make regulations prescribing the manner of publication: Diseases of Fish Act 1937 s 9. As to the procedure for publication see the Diseases of Fish Regulations 1984, SI 1984/455, reg 3.

6 Diseases of Fish Act 1937 s 2(1) (as substituted: see note 5 supra).

7 I.e. an area designated under *ibid* s 2 (as substituted).

8 *Ibid* s 2(2)(a) (as substituted: see note 5 supra).

9 *Ibid* s 2(2)(b) (as substituted: see note 5 supra).

10 *Ibid* s 2(3) (as substituted: see note 5 supra).

11 *Ibid* s 2(6) (as substituted: see note 5 supra). As to the penalty for this offence see s 8; and para 903 post.

**UPDATE****888-915 Placing on the market of aquaculture animals and products ...  
Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

**894-907 Power to designate areas in order to prevent the spread of  
disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/895. Direction to remove fish from designated areas.

**895. Direction to remove fish from designated areas.**

Where an order is in force designating an area<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> may serve a notice in writing on any occupier of inland waters<sup>3</sup> situated in the designated area<sup>4</sup> directing him to take such practicable steps as are specified in the notice to secure the removal of dead or dying fish from the waters concerned, and may regulate the manner in which any fish removed from the waters, and any parts of such fish, are to be disposed of<sup>5</sup>. The Secretary of State or the Welsh Ministers may serve a notice in writing on any person carrying on the business of fish farming in marine waters situated in the designated area<sup>6</sup>, directing him to take such practicable steps as are specified in the notice to secure the removal of dead or dying fish from any cage<sup>7</sup> which is owned or possessed by him, is used for the purposes of the business and is situated in the waters concerned, and may regulate the manner in which any fish removed from such a cage, and any parts of such fish, are to be disposed of<sup>8</sup>.

If the Secretary of State is or the Welsh Ministers are satisfied that a direction contained in such a notice has not been complied with within the time specified in the notice, he or they may authorise an inspector<sup>9</sup> to carry out the direction, and any expenses reasonably incurred by the inspector in doing so are recoverable from the person upon whom the notice was served<sup>10</sup>. If any person intentionally does any act which is prohibited by the notice, he is guilty of an offence unless he shows that he did not know that the act was prohibited<sup>11</sup>.

1       le an order under the Diseases of Fish Act 1937 s 2 (as substituted): see para 883 ante.

2       As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

3 'Occupier' means, in relation to inland waters, a person entitled without the permission of any other person, to take fish from the waters: *ibid* s 10(1) (definition amended by the Diseases of Fish Act 1983 s 4(1), (4)). Notwithstanding this definition of 'occupier', where the persons entitled without the permission of any other person to take fish from any inland waters are so entitled only by reason of their membership of a club or association, the person having the management of the waters on behalf of the club or association is, to the exclusion of any members of the club or association (other than himself if a member), deemed to be the occupier of the waters; and where a person is entitled, without the permission of any other person, to take fish from any inland waters only by virtue of a right acquired for a period not exceeding one year, not he, but the person from whom the right was acquired, is deemed to be the occupier of the waters: Diseases of Fish Act 1937 s 10(2) (amended by the Diseases of Fish Act 1983 s 4(5)). For the meaning of 'inland waters' see para 894 note 3 ante.

4 Diseases of Fish Act 1937 s 2A(1)(a) (s 2A added by the Diseases of Fish Act 1983 s 2). No notice may be served under the Diseases of Fish Act 1937 s 2A(1)(a) (as added) in respect of waters in the area of the Environment Agency, not being a fish farm: s 2A(5) (as so added; and amended by virtue of the Water Act 1989 Sch 17 para 3(1)). The Diseases of Fish Act 1937 refers to 'water authorities', the functions of which have largely devolved to the Environment Agency: see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. 'Fish farm' means any pond, stew, fish hatchery or other place used for keeping, with a view to their sale or to their transfer to other waters (including any other fish farm), live fish, live eggs of fish, or foodstuff for fish, and includes any buildings used in connection therewith, and the banks and margins of any water therein: s 10(1) (definition amended by the Diseases of Fish Act 1983 s 4(1), (3)). 'Foodstuff for fish' means any substance used, or intended or likely to be used, as food for fish, including natural food: Diseases of Fish Act 1937 s 10(1).

5 *Ibid* s 2A(2) (as added: see note 4 supra). For the meaning of 'fish' see para 883 note 1 ante.

6 *Ibid* s 2A(1)(b) (as added: see note 4 supra). 'Business of fish farming' means business of keeping live fish (whether or not for profit) with a view to their sale or to their transfer to other waters: s 10(1) (definition added by the Diseases of Fish Act 1983 s 4(1), (2)). For the meaning of 'marine waters' see para 894 note 3 ante.

7 'Cage' means any structure for containing live fish: Diseases of Fish Act 1937 s 10(1) (definition added by the Diseases of Fish Act 1983 s 4(1), (2)).

8 Diseases of Fish Act 1937 s 2A(3) (as added: see note 4 supra).

9 'Inspector' means a person authorised by the Secretary of State or the Welsh Ministers to act as an inspector under the Diseases of Fish Act 1937, either generally or for the particular purpose in question: s 10(1).

10 *Ibid* s 2A(5) (as added: see note 4 supra).

11 *Ibid* s 2A(5) (as added: see note 4 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/896. Authority to remove fish in designated areas.

#### **896. Authority to remove fish in designated areas.**

Where an order is in force designating an area<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup>, if satisfied that for the protection against disease of the stock of fish in any waters it is necessary to do so, may by a notice served<sup>3</sup> in writing give the following authority<sup>4</sup>:

- (1) authority to any occupier of inland waters<sup>5</sup> situated in the designated area to remove, notwithstanding anything in any agreement to the contrary, any fish<sup>6</sup> (or any fish of a description specified in the authorisation) from the waters, and to do so by such agents and by such methods (including methods otherwise illegal) as the Secretary of State considers or the Welsh Ministers consider to be most expedient for the purpose<sup>7</sup>;
- (2) authority to any person carrying on the business of fish farming<sup>8</sup> in marine waters<sup>9</sup> situated in the designated areas to remove, notwithstanding anything in any agreement to the contrary, any fish (or any fish of a description specified in the authorisation) from any cage<sup>10</sup> which is owned or possessed by him, is used for the purposes of the business and is situated in the waters, and to do so by such agents and by such methods (including methods otherwise illegal) as the Secretary of State considers or the Welsh Ministers consider to be most expedient for the purpose<sup>11</sup>.

Where a person has, in pursuance of such an authority, removed any fish, he must comply with any directions given to him by the Secretary of State or the Welsh Ministers as to the manner in which the fish, and any parts of such fish, are to be disposed of; and, if he intentionally fails to comply with any such directions, he is guilty of an offence<sup>12</sup>.

Where an order is in force designating an area<sup>13</sup>, the Secretary of State or the Welsh Ministers may authorise the Environment Agency<sup>14</sup> to remove any fish (or any fish of a specified description) from any inland waters in that area (not being a fish farm) and to do so by such agents and by such methods (including methods otherwise illegal) as the Secretary of State considers or the Welsh Ministers consider to be most expedient for the purpose<sup>15</sup>. The Environment Agency<sup>16</sup> must destroy or otherwise properly dispose of all fish removed under these powers and must send to the Secretary of State or the Welsh Ministers a return stating the number of fish so removed<sup>17</sup>.

1      Ie an order under the Diseases of Fish Act 1937 s 2 (as substituted): see para 883 ante.

2      As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

3      Ie a notice served under *ibid* s 2A (as added): see para 896 ante.

4      *Ibid* s 2B(1) (s 2B added by the Diseases of Fish Act 1983 s 2).

5      For the meaning of 'occupier' see para 895 note 3 ante. For the meaning of 'inland waters' see para 894 note 3 ante.

6      For the meaning of 'fish' see para 883 note 1 ante.

7 Diseases of Fish Act 1937 s 2B(2) (as added: see note 4 supra). No authority may be given under s 2B(2) (as added) in respect of waters in the area of the Environment Agency, not being a fish farm: s 2B(4) (as so added). The Diseases of Fish Act 1937 refers to 'water authorities', the functions of which have largely devolved to the Environment Agency: see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. For the meaning of 'fish farm' see para 895 note 4 ante.

8 For the meaning of 'business of fish farming' see para 895 note 6 ante.

9 For the meaning of 'marine waters' see para 894 note 3 ante.

10 For the meaning of 'cage' see para 895 note 7 ante.

11 Diseases of Fish Act 1937 s 2B(3) (as added: see note 4 supra).

12 Ibid s 2B(5) (as added: see note 4 supra).

13 See note 1 supra.

14 The Diseases of Fish Act 1937 refers to 'water authorities', the functions of which have largely devolved to the Environment Agency: see para 847 note 9 ante.

15 Ibid s 3(2) (substituted by the Diseases of Fish Act 1983 s 5, Schedule para 2(3)).

16 The Diseases of Fish Act 1937 refers to 'fishery boards'. As to the transfer of functions from fishery boards to water authorities (whose functions have largely devolved to the Environment Agency) see para 847 note 9 ante.

17 Ibid s 3(3) (amended by the Diseases of Fish Act 1983 Schedule para 2(4)).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/897. Duty to prepare a report on infected waters.

### **897. Duty to prepare a report on infected waters.**

If the Environment Agency<sup>1</sup> has reasonable ground for suspecting that any inland waters<sup>2</sup>, not being a fish farm<sup>3</sup>, are infected waters<sup>4</sup>, it must report the facts to the Secretary of State or the Welsh Ministers<sup>5</sup>, and may take any practicable steps for securing the removal of dead or dying fish from the waters<sup>6</sup>. The Secretary of State or the Welsh Ministers on receiving the report, must then cause an investigation to be made as to whether the waters are infected waters<sup>7</sup>.

1 The Diseases of Fish Act 1937 refers to 'fishery boards'. As to the transfer of functions from fishery boards to water authorities (whose functions have largely devolved to the Environment Agency) see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 For the meaning of 'inland waters' see para 894 note 3 ante.

3 For the meaning of 'fish farm' see para 895 note 4 ante.

4 For the meaning of 'infected waters' see para 894 note 4 ante.

5 As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

6 Ibid s 3(1) (amended by the Diseases of Fish Act 1983 s 5, Schedule para 2(2)).

7 Diseases of Fish Act 1937 s 3(1) (as amended: see note 6 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/898. Precautions in inland waters thought to be infected.

### **898. Precautions in inland waters thought to be infected.**

If an inspector<sup>1</sup> has reasonable grounds for suspecting that any inland waters<sup>2</sup> which are the waters of any fish farm<sup>3</sup> are infected waters<sup>4</sup> he may serve the prescribed notice<sup>5</sup> on the occupier<sup>6</sup> and must report the facts to the Secretary of State or the Welsh Ministers<sup>7</sup>.

No live fish<sup>8</sup>, eggs of fish or foodstuff for fish<sup>9</sup> may without the permission of the Secretary of State or the Welsh Ministers be transported from such fish farm until after the expiration of 30 days from the service of the notice, unless before the expiration of that period the occupier receives from the Secretary of State or the Welsh Ministers a written intimation that such permission is no longer required<sup>10</sup>. Where a notice has been served and the Secretary of State thinks or the Welsh Ministers think it desirable, he or they may authorise an inspector to serve a further prescribed notice before the expiry of the first 30 days whereupon the notice does not expire for 60 days<sup>11</sup>.

Any person who intentionally takes any fish, eggs of fish or foodstuff for fish into or out of any fish farm while the taking is prohibited by these provisions is guilty of an offence unless he shows that he did not know that the taking was prohibited<sup>12</sup>.

If any person entitled to take fish from inland waters or employed for the purpose of having the care of any inland waters has reasonable grounds for suspecting that those waters are infected waters, it is his duty forthwith to report the facts in writing to the Secretary of State or the Welsh Ministers or, if the waters are not a fish farm, to the Environment Agency<sup>13</sup>. If such a person fails to do so without reasonable excuse, he is guilty of an offence<sup>14</sup>.

1 For the meaning of 'inspector' see para 895 note 9 ante.

2 For the meaning of 'inland waters' see para 894 note 3 ante.

3 For the meaning of 'fish farm' see para 895 note 4 ante.

4 For the meaning of 'infected waters' see para 894 note 4 ante.

5 As to requirements for service of notices see the Diseases of Fish Act 1937 s 7. The Secretary of State and the Welsh Ministers have power to make regulations prescribing the form of notice: see s 9. For the form of notice see the Diseases of Fish Regulations 1984, SI 1984/455, reg 4, Sch 2.

6 For the meaning of 'occupier' see para 895 note 3 ante.

7 Diseases of Fish Act 1937 s 4(1) (s 4 substituted by the Diseases of Fish Act 1983 s 3). As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

8 For the meaning of 'fish' see para 883 note 1 ante.

9 For the meaning of 'foodstuff for fish' see para 895 note 4 ante.

10 Diseases of Fish Act 1937 s 4(2) (as substituted: see note 7 supra).

11 Ibid s 4(3) (as substituted: see note 7 supra).

12 Ibid s 4(4) (as substituted: see note 7 supra). As to the penalties see para 903 post.

13 Ibid s 4(5) (as substituted: see note 7 supra). The Diseases of Fish Act 1937 refers to 'water authority in whose area the waters are situated', but the functions of water authorities have largely devolved to the Environment Agency: see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

14 Ibid s 4(5) (as substituted: see note 7 supra). As to the penalties see para 903 post.

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**



Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

**894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(A) Diseases of Fish Act 1937/899. Precautions in marine waters thought to be infected.

**899. Precautions in marine waters thought to be infected.**

If an inspector<sup>1</sup> has reasonable grounds for suspecting that any marine waters<sup>2</sup> are infected waters<sup>3</sup> he may serve, upon any person who owns or possesses a cage<sup>4</sup> which is situated in the waters and is used by him for the purposes of a business of fish farming carried on by him<sup>5</sup>, the prescribed notice specifying the waters suspected to be infected waters<sup>6</sup>. If the inspector serves such a notice, he must report the facts to the Secretary of State or the Welsh Ministers<sup>7</sup>.

Where a notice has been served no live fish<sup>8</sup> and no live eggs of fish may<sup>9</sup> be taken into or out of any cage which is situated in the waters specified in the notice and is used by the farmer<sup>10</sup> for the purposes of a business of fish farming carried on by him, and no foodstuff for fish<sup>11</sup> may<sup>12</sup> be taken out of any such cage, until after the expiration of 30 days from the service of the notice (unless before the expiration of that period the farmer receives from the Secretary of State or the Welsh Ministers a written intimation that such permission is no longer required)<sup>13</sup>.

Where a notice has been served upon a farmer, the Secretary of State or the Welsh Ministers may, if he thinks or they think it desirable, authorise an inspector to serve a further prescribed notice upon the farmer so long as no written intimation has been given to the farmer; and if the inspector does so before the expiration of 30 days from the service of the first notice, the notice does not expire for 60 days<sup>14</sup>.

A person who intentionally takes any fish, eggs or foodstuff into or out of a cage while the taking is prohibited is guilty of an offence, unless he shows that he did not know that the taking was prohibited<sup>15</sup>.

If any person who: (1) owns or possesses a cage which is situated in marine waters and is used by him for the purposes of a business of fish farming carried on by him<sup>16</sup>; or (2) is employed for the purpose of having the care of a cage so situated and used for the purposes of a business of fish farming<sup>17</sup>, has reasonable grounds for suspecting that the waters in which the cage is situated are infected waters, it is his duty forthwith to report the facts in writing to the Secretary of State or the Welsh Ministers<sup>18</sup>. If without reasonable excuse he fails to do so, he is guilty of an offence<sup>19</sup>.

In Scotland if any person who (a) has a right to fish for salmon<sup>20</sup> in any marine waters; or (b) has a right of fishing in any private non-navigable marine waters; or (c) is employed for the

purpose of having the care of any marine waters or any private non-navigable marine waters, has reasonable grounds for suspecting that the waters (excluding any marine waters in which a cage used for the purposes of a business of fish farming is situated) are infected waters, he must forthwith report the facts in writing to the Secretary of State<sup>21</sup>. If he fails, without reasonable excuse, to do so, he is guilty of an offence<sup>22</sup>.

- 1 For the meaning of 'inspector' see para 895 note 9 ante.
- 2 For the meaning of 'marine waters' see para 894 note 3 ante.
- 3 For the meaning of 'infected waters' see para 894 note 4 ante.
- 4 For the meaning of 'cage' see para 895 note 7 ante.
- 5 For the meaning of 'business of fish farming' see para 895 note 6 ante.
- 6 Diseases of Fish Act 1937 s 4A(1)(a) (s 4A added by the Diseases of Fish Act 1983 s 3). As to the form of notice see the Diseases of Fish Regulations 1984, SI 1984/455, reg 4, Sch 2.
- 7 Diseases of Fish Act 1937 s 4A(1)(b) (as added: see note 6 supra). As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.
- 8 For the meaning of 'fish' see para 883 note 1 ante.
- 9 I.e. without the permission of the Secretary of State or the Welsh Ministers.
- 10 For these purposes, 'farmer' means the person served with the notice: see the Diseases of Fish Act 1937 s 4A(1) (as added: see note 6 supra).
- 11 For the meaning of 'foodstuff for fish' see para 895 note 4 ante.
- 12 I.e. without the permission of the Secretary of State or the Welsh Ministers.
- 13 Diseases of Fish Act 1937 s 4A(2) (as added: see note 6 supra).
- 14 Ibid s 4A(3) (as added: see note 6 supra).
- 15 Ibid s 4A(4) (as added: see note 6 supra).
- 16 Ibid s 4A(5)(a) (as added: see note 6 supra).
- 17 Ibid s 4A(5)(b) (as added: see note 6 supra).
- 18 Ibid s 4A(5) (as added: see note 6 supra).
- 19 Ibid s 4A(5) (as added: see note 6 supra).
- 20 See para 883 note 1 ante.
- 21 Diseases of Fish Act 1937 s 4A(6) (as added: see note 6 supra).
- 22 Ibid s 4A(6) (as added: see note 6 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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#### **900. Examination of waters.**

The Secretary of State or the Welsh Ministers<sup>1</sup> must, on the demand of the Environment Agency<sup>2</sup>, or of an occupier<sup>3</sup> of any inland waters<sup>4</sup>, cause an inspector<sup>5</sup> to make an examination of any waters within their areas or occupation, as the case may be, with a view to discovering, whether or not they are infected waters<sup>6</sup>. The Secretary of State or the Welsh Ministers must also furnish a report of the result of the examination to the Environment Agency<sup>7</sup> or occupier free of charge<sup>8</sup>. If at any such examination the waters are found to be infected waters, the Secretary of State or the Welsh Ministers must cause an inspector to make a further examination when required so to do by the Environment Agency<sup>9</sup> or occupier, as the case may be<sup>10</sup>. However, neither the Secretary of State nor the Welsh Ministers are bound to cause an examination to be made of any waters if the period which has elapsed since the conclusion of any previous examination is so short that in his or their opinion a further examination is not yet necessary<sup>11</sup>.

1 As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

2 The Diseases of Fish Act 1937 refers to 'fishery boards'. As to the transfer of functions from fishery boards to water authorities (whose functions have largely devolved to the Environment Agency) see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

3 For the meaning of 'occupier' see para 895 note 3 ante.

4 For the meaning of 'inland waters' see para 894 note 3 ante.

5 For the meaning of 'inspector' see para 895 note 9 ante.

6 Diseases of Fish Act 1937 s 5 (amended by the Diseases of Fish Act 1983 s 5, Schedule para 3). 'For the meaning of 'infected waters' see para 894 note 4 ante.

7 See note 2 supra.

8 Diseases of Fish Act 1937 s 5 (as amended: see note 6 supra).

9 See note 2 supra.

10 Diseases of Fish Act 1937 s 5 (as amended: see note 6 supra).

11 Ibid s 5 proviso.

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **901. Powers of inspectors etc under the Diseases of Fish Act 1937.**

Any inspector<sup>1</sup> has power:

- (1) to inspect any inland waters<sup>2</sup> in which fish<sup>3</sup> or the eggs of fish or foodstuff for fish<sup>4</sup> are likely to be found, and to take from them samples of any fish or of any such eggs or foodstuff or of water, mud, vegetation or other matter<sup>5</sup>;
- (2) to inspect any cage<sup>6</sup> situated in marine waters<sup>7</sup> and used for the purposes of a business of fish farming<sup>8</sup>, and to take samples of any fish or of any eggs of fish or of foodstuff for fish or of water or other matter<sup>9</sup>;
- (3) to inspect any marine waters in which fish of the salmon family<sup>10</sup> or freshwater fish or the eggs of such fish or foodstuff for fish are likely to be found, and to take from them samples of any such fish, eggs or foodstuff or of water, mud, vegetation or other matter<sup>11</sup>;
- (4) for the purpose of exercising any powers or performing any duties under the Diseases of Fish Act 1937, to enter, upon production on demand of his authority, on any land<sup>12</sup>;
- (5) for the purpose of exercising any powers or performing any duties under the Diseases of Fish Act 1937, to board and enter, upon production on demand of his authority, any cage situated in marine waters and used for the purposes of a business of fish farming<sup>13</sup>.

Any person who refuses to admit or intentionally obstructs an inspector in the exercise or performance of any of these powers and duties is guilty of an offence<sup>14</sup>.

If in any sample of fish taken from any inland waters by an inspector under these powers none is found to be infected, the Secretary of State or the Welsh Ministers<sup>15</sup> must pay to the occupier

of the waters<sup>16</sup> a sum equal to the market value of the fish taken in that sample<sup>17</sup>. If in any sample of fish taken from a cage by an inspector under the powers in head (2) above none is found to be infected, the Secretary of State or the Welsh Ministers must pay to the person who owns or possesses the cage and uses it for the purposes of a business of fish farming carried on by him a sum equal to the market value of the fish taken in that sample<sup>18</sup>.

Any person authorised in writing in that behalf by the Environment Agency<sup>19</sup> may, for the purpose of performing any duties imposed on him by the Agency in exercise of its functions under the Diseases of Fish Act 1937, enter, upon production on demand of his authority, on any land situated within the area not being part of a fish farm<sup>20</sup>. Any person who refuses to admit him or who intentionally obstructs him in the carrying out of any of those duties is guilty of an offence<sup>21</sup>.

1 For the meaning of 'inspector' see para 895 note 9 ante.

2 For the meaning of 'inland waters' see para 894 note 3 ante.

3 For the meaning of 'fish' see para 883 note 1 ante.

4 For the meaning of 'foodstuff for fish' see para 895 note 4 ante.

5 Diseases of Fish Act 1937 s 6(2)(a) (substituted by the Diseases of Fish Act 1983 s 5, Schedule para 4(1), (3)).

6 For the meaning of 'cage' see para 895 note 7 ante.

7 For the meaning of 'marine waters' see para 894 note 3 ante.

8 For the meaning of 'business of fish farming' see para 895 note 6 ante.

9 Diseases of Fish Act 1937 s 6(2)(aa) (added by the Diseases of Fish Act 1983 Schedule para 4(1), (3)).

10 For the meaning of 'fish of the salmon family' see para 883 note 1 ante.

11 Diseases of Fish Act 1937 s 6(2)(ab) (added by the Diseases of Fish Act 1983 Schedule para 4(1), (3)).

12 Diseases of Fish Act 1937 s 6(2)(b). 'Land' includes land covered with inland waters (definition amended by the Diseases of Fish Act 1983 s 4(1), (4)).

13 Diseases of Fish Act 1937 s 6(2)(c) (added by the Diseases of Fish Act 1983 Schedule para 4(1), (5)).

14 Diseases of Fish Act 1937 s 6(2) (amended by the Diseases of Fish Act 1983 Schedule para 4(1), (6)). As to the penalties see para 903 post.

15 As to the Secretary of State see para 846 ante. In relation to Wales, the functions under the Diseases of Fish Act 1937 are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable: see para 846 ante.

16 Or where there is more than one occupier of the waters, to such of the occupiers as the Secretary of State considers or the Welsh Ministers consider equitable: see *ibid* s 6(3). For the meaning of 'occupier' see para 895 note 3 ante.

17 *Ibid* s 6(3) (amended by the Diseases of Fish Act 1983 Schedule para 4(1), (7)).

18 Diseases of Fish Act 1937 s 6(3A) (added by the Diseases of Fish Act 1983 Schedule para 4(1), (8)).

19 The Diseases of Fish Act 1937 refers to 'fishery boards'. As to the transfer of functions from fishery boards to water authorities (whose functions have largely devolved to the Environment Agency) see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

20 *Ibid* s 6(4).

21 *Ibid* s 6(4) (amended by the Diseases of Fish Act 1983 Schedule para 4(1), (9)).

**UPDATE****888-915 Placing on the market of aquaculture animals and products ...  
Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

**894-907 Power to designate areas in order to prevent the spread of  
disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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**902. Railway and canal undertakings.**

Any person exercising the statutory powers of entry and inspection<sup>1</sup> on land<sup>2</sup> owned or used for the purposes of any railway or canal undertaking must conform to such reasonable requirements of the undertakers as are necessary to prevent obstruction to, or interference with, traffic on their railway or canal, as the case may be<sup>3</sup>. The undertakers are not liable for any accident or injury to any such person exercising his powers upon any railway or land carrying a railway belonging to them, or upon any canal or reservoir, or the banks of any canal or reservoir belonging to them<sup>4</sup>.

1       Ie the powers conferred by the Diseases of Fish Act 1937 s 6 (as amended): see paras 901 ante, 937 post.

2       As to the meaning of 'land' see para 901 note 12 ante.

3       Diseases of Fish Act 1937 s 6(5).

4       Ibid s 6(5)(a), (b). As to vesting of railways and canals see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES; WATER AND WATERWAYS.

**UPDATE****888-915 Placing on the market of aquaculture animals and products ...  
Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21

(placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **903. Penalties for offences under the Diseases of Fish Act 1937.**

Any person guilty of an offence under the Diseases of Fish Act 1937 is liable on summary conviction to a fine not exceeding level 4 on the standard scale<sup>1</sup>. The court by whom any person is convicted of an offence may order to be forfeited any fish<sup>2</sup>, eggs of fish, foodstuff or article in respect of which the offence was committed<sup>3</sup>. In England and Wales the Environment Agency<sup>4</sup> has power to take legal proceedings to enforce provisions of the Act as respects inland waters<sup>5</sup>.

1 Diseases of Fish Act 1937 s 8(1) (amended by the Diseases of Fish Act 1983 s 5, Schedule para 6(1), (2); and the Statute Law (Repeals) Act 1993). As to the standard scale see para 841 note 4 ante.

2 For the meaning of 'fish' see para 883 note 1 ante.

3 Diseases of Fish Act 1937 s 8(1).

4 The Diseases of Fish Act 1937 refers to 'water authorities', the functions of which have largely devolved to the Environment Agency: see para 847 note 9 ante. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

5 Ibid s 8(2) (substituted by the Water Act 1973 s 40, Sch 8 para 43; and amended by the Diseases of Fish Act 1983 Schedule para 6(1), (3)). For the meaning of 'inland waters' see para 894 note 3 ante. Note that offences committed in inland waters in Scotland (including offences committed in inland waters in Scotland with respect to which functions under the Diseases of Fish Act 1937 are exercisable by the Environment Agency) are to be proceeded against and punished in Scotland: s 8(3) (substituted by the Water Act 1973 s 40, Sch 8 para 43; and amended by the Diseases of Fish Act 1983 Schedule para 6(1), (4); the Salmon Act 1986 s 41, Sch 4 para 6; and the Environment Act 1995 s 105, Sch 15 para 4(2)). For the purposes of and incidental to the jurisdiction of any magistrates' court (or, in Scotland, of the sheriff), any offence under the Diseases of Fish Act 1937 committed in the territorial sea adjacent to Great Britain is to be taken to have been committed in any place in which the offender may for the time being be found: s 8(4) (added by the Diseases of Fish Act 1983 Schedule para 6(1), (5)). As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

### **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

#### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/904. Official census.

### **(B) DISEASES OF FISH (CONTROL) REGULATIONS 1994**

#### **904. Official census.**

As soon as possible after a notice<sup>1</sup> has been served or an order<sup>2</sup> has been made under the Diseases of Fish Act 1937 in relation to a farm suspected of being infected<sup>3</sup>, the Secretary of State or the Welsh Ministers<sup>4</sup> must prepare a record (called an 'official census') in relation to the fish on the farm and give it to the occupier of the farm<sup>5</sup>. The official census must contain the following information: (1) species of fish present at the farm and the disease with which they are suspected of being infected; (2) categories of fish; (3) number of dead fish; (4) number of infected fish; (5) number of fish suspected of being infected or contaminated<sup>6</sup>.

After the official census has been given to the occupier of the farm, the occupier must check regularly for any increased population, or new mortality, of the fish on the farm and make any appropriate amendments to the official census<sup>7</sup>.

The official census must be kept by the occupier in such a place so that it is available to the Secretary of State, the Welsh Ministers or an inspector on demand for inspection<sup>8</sup>. It must be retained by the occupier of the farm for a period of four years from the date on which the notice<sup>9</sup> has lapsed or the order<sup>10</sup> has been revoked, whichever is the later<sup>11</sup>.

1       le a notice under the Diseases of Fish Act 1937 s 4 (as substituted) (see para 898 ante) or s 4A (as added) (see para 899 ante).

2       le an order under *ibid* s 2 (as substituted) (see para 894 ante).

3       'Farm' means any establishment or, in general, any geographically defined installation in which aquaculture animals are reared or kept with a view to their being placed on the market, whether the waters of that farm are inland waters or marine waters: Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 2(1) (reg 2 substituted by SI 2002/284). 'Farm suspected of being infected' means a farm containing fish suspected of being infected: Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 2(1) (as so substituted). 'Fish suspected of being infected' means fish showing clinical signs or post mortem lesions or dubious reactions in laboratory tests giving rise to reasonable suspicion of the presence of a disease which is listed in Sch 3: reg 2(1) (as so substituted).

4       Where a farm is entirely in Wales, any function of the Secretary of State under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended) may be exercised by the Secretary of State, by the



Welsh Ministers or by both acting jointly: reg 2(6) (as substituted: see note 3 supra) As to the Secretary of State and the Welsh Ministers see para 846 ante.

5 Ibid reg 3(1) (reg 3 substituted by SI 2002/284). 'Occupier', in relation to a fish farm the waters of which are inland waters, has the meaning given to it in the Diseases of Fish Act 1937 (see para 895 note 3 ante); and in relation to a fish farm the waters of which are marine waters, means the person upon whom a notice may be served under s 2A (as added) or s 4A (as added) (see paras 895, 899 ante): Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 2(1) (as substituted: see note 3 supra). 'Inland waters' means waters within England and Wales which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and 'marine waters' means waters (other than inland waters) within the seaward limits of the territorial sea adjacent to England and Wales: reg 2(1) (as so substituted).

6 Ibid reg 3 (as substituted: see note 5 supra), Sch 2.

7 Ibid reg 3(2) (as substituted: see note 5 supra).

8 Ibid reg 3(3) (as substituted: see note 5 supra). 'Inspector' means a person appointed by the Secretary of State for the purposes of the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended): reg 2(1) (as so substituted).

9 See note 1 supra.

10 See note 2 supra.

11 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 3(4) (as substituted: see note 5 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/905. Control measures for suspected diseases on farms.

### **905. Control measures for suspected diseases on farms.**

Where a farm<sup>1</sup> is suspected of being infected with a specified disease<sup>2</sup>, and a notice<sup>3</sup> has been served, or an order<sup>4</sup> which has been made under the Diseases of Fish Act 1937 in relation to that farm remains current, then the occupier<sup>5</sup> of the farm must take all reasonable steps to ensure that the control measures are complied with in relation to the farm<sup>6</sup>. The occupier of the

farm must also take such measures as may be specified by the Secretary of State or the Welsh Ministers<sup>7</sup> to disinfect the entrances and exits to the farm<sup>8</sup>.

1 For the meaning of 'farm' see para 904 note 3 ante.

2 ie a disease specified in the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 3 Pt I or Pt II.

3 ie a notice under the Diseases of Fish Act 1937 s 4 (as substituted) (see para 898 ante) or s 4A (as added) (see para 899 ante).

4 ie an order under ibid s 2 (as substituted) (see para 894 ante).

5 For the meaning of 'occupier' see para 904 note 5 ante.

6 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 4, Sch 4 (substituted by SI 2002/284). The control measures are as follows. No person may: (1) bring on to or remove from the farm any fish, whether alive or dead, or eggs or gametes; or (2) dispose of any dead fish or their offal except under the supervision of an inspector; (3) bring on to or take from the farm any equipment, material or substances liable to transmit disease; or (4) enter on to or exit from the farm; or (5) bring a vehicle on to or take a vehicle from the farm; or (6) remove any fish, whether alive or dead, or eggs or gametes from a farm which is: (a) in the same water catchment area or coastal area as the farm at which the outbreak of disease is suspected; and (b) whose occupier has been notified that his farm is under surveillance for disease, without the authorisation in writing of the Secretary of State or the Welsh Ministers to do so: Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 4 para 1.

7 Where a farm is entirely in Wales, any function of the Secretary of State under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended) may be exercised by the Secretary of State, by the Welsh Ministers or by both acting jointly: reg 2(6) (substituted by SI 2002/284). As to the Secretary of State and the Welsh Ministers see para 846 ante.

8 Diseases of Fish (Control) Regulations 1994, SI 1994/1447 Sch 4 para 2 (as substituted: see note 6 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/906. Control measures for confirmed diseases on farms.

## **906. Control measures for confirmed diseases on farms.**

Where the presence of a specified disease is confirmed in fish on a farm<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> must by notice in writing served on the occupier<sup>3</sup> of the farm require him to take steps to control the disease<sup>4</sup>.

1 For the meaning of 'farm' see para 904 note 3 ante.

2 Where a farm is entirely in Wales, any function of the Secretary of State under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended) may be exercised by the Secretary of State, by the Welsh Ministers or by both acting jointly: reg 2(6) (reg 2 substituted by SI 2002/284). As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 For the meaning of 'occupier' see para 904 note 5 ante.

4 Where the disease is one listed in the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 3 Pt I (ie infectious salmon anaemia (ISA)), the steps include: (1) the withdrawal of all fish from the waters of the farm; (2) all live fish showing clinical signs of the disease to be killed and disposed of or consigned for disposal; (3) the disposal of all eggs, gametes, and dead fish; (4) the draining, cleaning and disinfection of all pools on the farm; (5) the disposal of any resultant fish waste and offal and the treatment of used water so as to inactivate any pathogens it may contain; (6) the cleaning and disinfection or destruction of any equipment etc: see reg 5 (substituted by SI 2002/284). Repopulation of the farm may only take place when the Secretary of State or Welsh Ministers so authorise by notice: Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 5 (as so substituted).

Where the disease is one listed in Sch 3 Pt II (ie infectious haematopoietic necrosis (IHN) or viral haemorrhagic septicaemia (VHS)), the steps include: (a) the withdrawal of all fish from the waters of the farm; (b) all live fish showing clinical signs of the disease to be killed and disposed of or consigned for disposal; (c) the disposal of all eggs, gametes, and dead fish; (d) the draining, cleaning and disinfection of all pools on the farm; (e) the cleaning and disinfection or destruction of any equipment etc: see reg 6 (substituted by SI 2002/284). Repopulation of the farm may only take place when the Secretary of State or Welsh Ministers so authorise by notice: reg 6 (as so substituted).

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/907. Control measures for disease of fish in waters not at a farm.

## **907. Control measures for disease of fish in waters not at a farm.**

Where fish from the wild are suspected of being infected with, or are infected with, a specified disease<sup>1</sup> or where fish from the wild which are in an approved zone are suspected of being infected with, or are infected with a specified disease<sup>2</sup> and an order designating the area under the Diseases of Fish Act 1937<sup>3</sup> has been made, then the following control measures apply<sup>4</sup>. No person may (without the written authorisation of the Secretary of State or the Welsh Ministers<sup>5</sup>): (1) bring on to or take from the designated area any equipment, material or substances liable to transmit disease; or (2) enter on to or exit from the designated area; or (3) bring a vehicle into or take a vehicle from the designated area<sup>6</sup>. The occupier of the waters within the designated area must take the measures specified by the Secretary of State or Welsh Ministers to disinfect the entrances and exits to those waters<sup>7</sup>.

1       Ie a disease listed in the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 3 Pt I: see para 906 note 4 ante.

2       Ie a disease listed in ibid Sch 3 Pt II: see para 906 note 4 ante.

3       Ie an order under the Diseases of Fish Act 1937 s 2 (as substituted): see para 894 ante.

4       Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 9(1) (amended by SI 2002/284).

5       Where a farm is entirely in Wales, any function of the Secretary of State under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended) may be exercised by the Secretary of State, by the Welsh Ministers or by both acting jointly: reg 2(6) (reg 2 substituted by SI 2002/284). As to the Secretary of State and the Welsh Ministers see para 846 ante.

6       Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 9(2).

7       Ibid reg 9(3) (amended by SI 2002/284).

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

### **894-907 Power to designate areas in order to prevent the spread of disease ... Control measures for disease of fish in waters not at a farm**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/908. Prohibition on vaccination against disease.

#### **908. Prohibition on vaccination against disease.**

No person may vaccinate any fish or cause any fish to be vaccinated against specified diseases<sup>1</sup> unless the presence of the disease has been confirmed at any place in Great Britain, and he has obtained the prior authorisation of the Secretary of State to do so<sup>2</sup>. In respect of certain other specified diseases there is an absolute prohibition on vaccination<sup>3</sup>.

1       le a disease listed in the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 3 Pt I: see para 906 note 4 ante.

2       Ibid reg 10(1) (substituted by SI 2002/284). For the meaning of 'Great Britain' see para 843 note 1 ante. As to the Secretary of State see para 846 ante.

3       No person may vaccinate any fish or cause any fish to be vaccinated against any disease listed in the Diseases of Fish (Control) Regulations 1994, SI 1994/1447, Sch 3 Pt II (see para 906 note 4 ante): reg 10(2) (amended by SI 2002/284).

#### **UPDATE**

#### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/909. Powers of inspectors under the Diseases of Fish (Control) Regulations 1994.

#### **909. Powers of inspectors under the Diseases of Fish (Control) Regulations 1994.**

An inspector<sup>1</sup> has the right<sup>2</sup> at all reasonable hours to enter any land or premises (other than any premises used only as a dwelling) for the purpose of ascertaining whether there is or has been on the land or premises any contravention of the Diseases of Fish (Control) Regulations 1994<sup>3</sup>. He has powers to carry out all checks and examinations necessary for the enforcement of the regulations and in particular may carry out inspections of farms<sup>4</sup>, take samples (and, if necessary, send the samples for laboratory testing), and examine relevant documentary or data processing material<sup>5</sup>. An inspector entering any premises may take with him such persons, equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers, and a representative of the European Commission<sup>6</sup>.

If any person fails to comply with any control measure<sup>7</sup>, then, without prejudice to any proceedings following such failure, an inspector may enter any premises in relation to which such control measure relates and take, or cause to be taken, such steps as appear to the inspector to be necessary either to ensure compliance with the control measure or to remedy

the failure to comply with it, at the expense of the person required to comply with the control measure<sup>8</sup>.

- 1 For the meaning of 'inspector' see para 904 note 8 ante.
- 2 If required to do so, the inspector must produce some duly authenticated document showing his authority: Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 11(1) (amended by SI 2002/284).
- 3 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 11(1) (as amended: see note 2 supra).
- 4 For the meaning of 'farm' see para 904 note 3 ante.
- 5 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 11(2).
- 6 Ibid reg 11(3).
- 7 'Control measure' means any requirement, prohibition or restriction imposed on any person (other than the Secretary of State) by or under the Diseases of Fish (Control) Regulations 1994, SI 1994/1447 (as amended): reg 12(2) (reg 12 substituted by SI 2002/284).
- 8 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 12(1) (as substituted: see note 7 supra).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(B) Diseases of Fish (Control) Regulations 1994/910. Offences and penalties under the Diseases of Fish (Control) Regulations 1994.

### **910. Offences and penalties under the Diseases of Fish (Control) Regulations 1994.**

No person may:

- (1) intentionally obstruct any person acting in the execution of the Diseases of Fish (Control) Regulations 1994<sup>1</sup>;
- (2) without reasonable cause, fail to give to any person acting in the execution of the regulations any assistance or information which he may reasonably require of him for the purposes of his functions under the regulations<sup>2</sup>; or
- (2) furnish to any person acting in the execution of the regulations any information which he knows to be false or misleading<sup>3</sup>.

Any person (other than the Secretary of State or the Welsh Ministers<sup>4</sup>) contravening any requirement or prohibition imposed on him by or under the regulations is guilty of an offence<sup>5</sup>. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>6</sup>.

Where a body corporate is guilty of an offence under the regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director<sup>7</sup>, manager, secretary or other similar officer of the body corporate, or by any person who was purporting to act in such capacity, he, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished accordingly<sup>8</sup>.

1 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 13(1)(a).

2 Ibid reg 13(1)(b). However, this is not to be construed as requiring any person to answer any question or give any information if to do so might incriminate him: reg 13(2) (amended by SI 2002/284).

3 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 13(1)(c).

4 As to the Secretary of State and the Welsh Ministers see para 846 ante.

5 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 15(1) (substituted by SI 2002/284).

6 Diseases of Fish (Control) Regulations 1994, SI 1994/1447, reg 15(2). As to the standard scale see para 841 note 4 ante.

7 'Director' in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: ibid reg 14(2).

8 Ibid reg 14(1).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(C) Fish Health Regulations 1997/911. Notification of diseases.

## (C) FISH HEALTH REGULATIONS 1997

### **911. Notification of diseases.**

Any person who knows of any observed abnormal mortality<sup>1</sup> among bivalve molluscs<sup>2</sup> in farms<sup>3</sup>, farming areas, harvested natural beds, or purification centres or storage tanks which discharge into the sea<sup>4</sup> or knows of any symptom amongst fish or molluscs which might constitute ground for suspecting the presence of a specified disease<sup>5</sup> or has reason to suspect the presence of such a disease<sup>6</sup> must notify the Secretary of State<sup>7</sup> as quickly as possible<sup>8</sup>. Any person who has in his possession an infected item<sup>9</sup> or a suspected infected item must detain it until it has been inspected by a veterinary inspector<sup>10</sup> or he has been instructed to dispose of it<sup>11</sup>. A veterinary inspector has power to take samples of fish or molluscs to establish whether a specified disease is present<sup>12</sup>.

- 1 'Observed abnormal mortality' means sudden mortality affecting approximately 15% of stocks and occurring over a short period between two inspections (confirmed within 15 days): see EC Council Directive 95/70 (OJ L332, 30.12.1995, p 33) introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs, art 2; definition applied by the Fish Health Regulations 1997, SI 1997/1881, reg 12(4).
- 2 'Bivalve mollusc' is not defined in the Fish Health Regulations 1997, SI 1997/1881.
- 3 'Farm' means any establishment or, in general, any geographically defined installation in which aquaculture animals are reared or kept with a view to their being placed on the market: *ibid* reg 2.
- 4 *Ibid* reg 12(1)(a).
- 5 *Ibid* reg 12(1)(b). The specified diseases are: infectious salmon anaemia; infectious haematopoietic necrosis ('IHN'); viral haemorrhagic septicaemia ('VHS'); bonamiosis; haplosporidiosis; iridovirus; maritelliosis; mikrocystosis; perkinsosis: see Sch 1.
- 6 *Ibid* reg 12(1)(c).
- 7 As to the Secretary of State see para 846 *ante*.
- 8 Fish Health Regulations 1997, SI 1997/1881, reg 12(1).
- 9 'Infected item' means a fish or mollusc or the carcase or part of the carcase of the same which is infected with a disease listed in *ibid* Sch 1: reg 12(4).
- 10 *Ie* a person appointed by the Secretary of State for the purposes of the Fish Health Regulations 1997, SI 1997/1881: reg 2.
- 11 *Ibid* reg 12(2).
- 12 *Ibid* reg 12(3).

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(C) Fish Health Regulations 1997/912. Service of notice requiring slaughter of fish or destruction of molluscs.

#### **912. Service of notice requiring slaughter of fish or destruction of molluscs.**

If the result of a test for a specified disease<sup>1</sup> is positive the Secretary of State<sup>2</sup> may serve a written notice on the person appearing to have charge of any fish facilities or equipment<sup>3</sup>. The notice may require the slaughter of all fish in infected farms<sup>4</sup>, the destruction of all infected or contaminated fish<sup>5</sup>, and the disinfection of facilities and equipment<sup>6</sup>.



If a test for a specified disease<sup>7</sup> is positive the Secretary of State may by notice in writing served on the person appearing to have charge of any molluscs, facilities or equipment, require the destruction of all infected or contaminated molluscs and the disinfection of facilities<sup>8</sup>.

- 1      Is a disease listed in the Fish Health Regulations 1997, SI 1997/1881, Sch 1: see para 911 note 5 ante.
- 2      As to the Secretary of State see para 846 ante.
- 3      Fish Health Regulations 1997, SI 1997/1881, reg 13.
- 4      Ibid reg 13(a).
- 5      Ibid reg 13(b).
- 6      Ibid reg 13(c).
- 7      See note 1 supra.
- 8      Fish Health Regulations 1997, SI 1997/1881, reg 14(3).

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (vii) Protection of Fisheries/D. DISEASES OF FISH/(C) Fish Health Regulations 1997/913. Veterinary inspector's powers.

### **913. Veterinary inspector's powers.**

If a veterinary inspector<sup>1</sup> has reasonable grounds for suspecting amongst molluscs the presence of a specified disease<sup>2</sup> he may by notice prohibit the movement of molluscs, to or from premises except under written authority of the Secretary of State<sup>3</sup> or prohibit the taking of molluscs from any area specified in the notice except under written authority from the Secretary of State<sup>4</sup>. The notice remains in force until withdrawn by a further notice from an veterinary inspector<sup>5</sup>.

A veterinary inspector has the right<sup>6</sup> at all reasonable times to enter on to any land or premises for the purpose of ascertaining whether there is or has been a contravention of the Fish Health Regulations 1997<sup>7</sup>. A veterinary inspector has powers to carry out all checks and examinations necessary for the enforcement of the regulations<sup>8</sup>. In particular he may carry out inspections of premises<sup>9</sup>, take samples of or from aquaculture animals or products<sup>10</sup> and examine relevant documentary or computer material<sup>11</sup> and may inspect and take samples necessary to carry out health inspections<sup>12</sup>. A veterinary inspector may take with him such persons, equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers<sup>13</sup>.

Where a person fails to comply with the requirements of a notice served under the Fish Health Regulations 1997<sup>14</sup>, a veterinary inspector may enter on to any premises to which the notice

relates and take or cause to be taken such steps as appear to be necessary to ensure compliance with the requirement of the notice or remedy the consequences of failure to comply<sup>15</sup>.

1 See para 911 note 10 ante.

2 Is a disease listed in the Fish Health Regulations 1997, SI 1997/1881, Sch 1: see para 911 note 5 ante.

3 As to the Secretary of State see para 846 ante.

4 Fish Health Regulations 1997, SI 1997/1881, reg 14(1).

5 See *ibid* reg 14(2).

6 This right is subject to the Animals and Animal Products (Import and Export) Regulations 2006, SI 2006/1471, and the Products of Animal Origin (Import and Export) Regulations 1996, SI 1996/3124, reg 13 (as amended) (see ANIMALS vol 2 (2008) PARA 1084): Fish Health Regulations 1997, SI 1997/1881, reg 15(1).

7 *Ibid* reg 15(2). 'Premises' includes any place, farm, installation in which aquaculture animals are kept, vehicle, ship, vessel, boat, craft, hovercraft or aircraft: reg 2. For the meanings of 'aquaculture animals' and 'aquaculture products' see para 888 notes 2, 3 ante.

8 *Ibid* reg 15(3).

9 *Ibid* reg 15(3)(a).

10 *Ibid* reg 15(3)(b).

11 *Ibid* reg 15(3)(c).

12 *Ibid* reg 15(4). The text refers to health inspections, sampling plans and diagnostic methods established by EC Directive 91/67 (OJ L46, 19.2.91, p 1) concerning the animal health conditions governing the placing on the market of aquaculture animals and products (as amended), and EC Council Directive 95/70 (OJ L332, 30.12.95, p 33) introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs. Note that a European Inspector may accompany any person who is enforcing the regulations for the purpose of establishing whether these directives are applied in a uniform way: Fish Health Regulations 1997, SI 1997/1881, reg 19.

13 *Ibid* reg 15(5).

14 See para 912 ante.

15 Fish Health Regulations 1997, SI 1997/1881, reg 16. All reasonable costs of doing so are recoverable by the Secretary of State from the person on whom the notice was served: reg 16.

## UPDATE

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

DISEASES OF FISH/(C) Fish Health Regulations 1997/914. Obstruction of persons executing the Fish Health Regulations 1997.

#### **914. Obstruction of persons executing the Fish Health Regulations 1997.**

No person may obstruct any person acting in the execution of the Fish Health Regulations 1997<sup>1</sup>. Nor may anyone, without reasonable cause, fail to give any assistance or information reasonably required for the purposes of the regulations<sup>2</sup> or furnish any information which he knows to be false or misleading<sup>3</sup>.

1 Fish Health Regulations 1997, SI 1997/1881, reg 18(1)(a).

2 Ibid reg 18(1)(b). However, this is not to be construed as requiring a person to answer or give information that might incriminate him: reg 18(2).

3 Ibid reg 18(1)(c).

#### **UPDATE**

#### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

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#### **915. Offences and penalties under the Fish Health Regulations 1997.**

Any person who contravenes or fails to comply with a provision of the Fish Health Regulations 1997<sup>1</sup> or a provision or requirement of a notice served in accordance with the regulations is guilty of an offence<sup>2</sup>.

Any person who, for the purposes of procuring the issue of a movement document<sup>3</sup>, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular or who intentionally fails to disclose any material particular is guilty of an offence<sup>4</sup>.

A person found guilty of an offence under the regulations is liable on summary conviction to a fine at level 5 on the standard scale<sup>5</sup> (except in the case of failing to comply with the provision relating to the notification of disease<sup>6</sup>, where the penalty is a fine at level 4<sup>7</sup>).

Where a body corporate is guilty of an offence under the regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, he (as well as the body corporate) is guilty of an offence and is liable to be proceeded against and punished accordingly<sup>8</sup>.

- 1      le the Fish Health Regulations 1997, SI 1997/1881.
- 2      Ibid reg 21(1).
- 3      As to movement documents see paras 890 note 2, 891 ante.
- 4      Fish Health Regulations 1997, SI 1997/1881, reg 21(2)(a), (b), (c).
- 5      Ibid reg 22(2). As to the standard scale see para 841 note 4 ante.
- 6      le ibid reg 12(1) (see para 911 ante).
- 7      Ibid reg 22(1).
- 8      Ibid reg 20(1). For these purposes, 'director' in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate: reg 20(2). As to penalties see the text to notes 5-7 supra.

## **UPDATE**

### **888-915 Placing on the market of aquaculture animals and products ... Offences and penalties under the Fish Health Regulations 1997**

Diseases of Fish Act 1937 repealed, SI 1994/1447 and SI 1997/1881 revoked: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463; see Pt 3 regs 15-21 (placing on the market), Pt 4 regs 22-31 (notification and control of disease outbreaks), Pt 5 regs 32-40 (enforcement, appeals and penalties).

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## ***E. INJURY AND POLLUTION***

### **916. Explosives, poisons, electrical devices and malicious injury.**

No person may use in or near any waters<sup>1</sup> any explosive substance, any poison or other noxious substance, or any electrical device, with intent thereby to take or destroy fish<sup>2</sup>. This prohibition does not apply to the use by a person of any substance or device, with the written permission of the Environment Agency<sup>3</sup>, for a scientific purpose, or for the purpose of protecting, improving or replacing stocks of fish<sup>4</sup>. No person without lawful excuse may destroy or damage any dam<sup>5</sup>, floodgate or sluice with intent thereby to take or destroy fish<sup>6</sup>.

A person who contravenes these prohibitions<sup>7</sup> or who has in his possession any explosive or noxious substance or any electrical device for the purpose of using them with intent to take or destroy fish<sup>8</sup> is guilty of an offence<sup>9</sup> punishable on summary conviction with a fine of the prescribed sum, or on conviction on indictment with imprisonment for a maximum term of two years or a fine or both<sup>10</sup>. The court by which a person is convicted of the offence of unlawful possession of any substance or device<sup>11</sup> may order the forfeiture of that substance or device<sup>12</sup>.

1      These waters are expressed to include waters adjoining the coast of England and Wales and to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is

measured: see the Salmon and Freshwater Fisheries Act 1975 s 5(1) (amended by Fishery Limits Act 1976 s 9(1), Sch 2 para 20). As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

2 Salmon and Freshwater Fisheries Act 1975 s 5(1).

3 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

4 Salmon and Freshwater Fisheries Act 1975 s 5(2) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 ss 105, 120(3), Sch 15 para 2, Sch 24). The use of any substance in any waters for any purpose falling within the Salmon and Freshwater Fisheries Act 1975 s 5(2), and with the permission of the Environment Agency, does not constitute an offence under s 4 (see para 917 post), or under any byelaws (see para 932 post), or under the Water Resources Act 1991 s 85(1) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291): Salmon and Freshwater Fisheries Act 1975 s 5(5) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 30(2)).

5 For the meaning of 'dam' see para 848 note 8 ante.

6 Salmon and Freshwater Fisheries Act 1975 s 5(3).

7 Ie a person who contravenes ibid s 5(1) or s 5(3): see the text to notes 1-6 supra.

8 Ie for the purpose of contravening ibid s 5(1).

9 Ibid s 5(4).

10 Ibid s 37, Sch 4 para 1(1), Table. As to the prescribed sum see para 849 note 15 ante.

11 Ie possession of any substance or device in contravention of ibid s 5: see Sch 4 para 5(c).

12 Ibid Sch 4 para 5(c).

## UPDATE

### **916-917 Explosives, poisons, electrical devices and malicious injury, Pollution generally**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **916 Explosives, poisons, electrical devices and malicious injury**

TEXT AND NOTES 1, 2--Salmon and Freshwater Fisheries Act 1975 s 5(1) further amended, s 5(2A) added: Marine and Coastal Access Act 2009 Sch 16 para 3(2), (4) (in force 1 January 2011: SI 2010/298).

TEXT AND NOTE 4--Salmon and Freshwater Fisheries Act 1975 s 5(2) further amended: Marine and Coastal Access Act 2009 Sch 16 para 3(3).

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## 917. Pollution generally.

Unless authorised by statute, no one has any right to pollute<sup>1</sup> the water of a several fishery or to discharge water into a river at such a temperature that it causes damage to a fishery; and an injunction may be granted to prevent any such discharge<sup>2</sup>.

A person is guilty of an offence if he causes or knowingly permits to flow<sup>3</sup>, or puts or knowingly permits to be put, into any waters containing fish, or into any tributaries<sup>4</sup> of such waters, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish<sup>5</sup>. Subject to the exceptions mentioned below<sup>6</sup>, the offender is liable on summary conviction to a maximum fine of the prescribed sum<sup>7</sup> and £40 for each day on which the offence continues after conviction, or on conviction on indictment to imprisonment for a maximum term of two years or to a fine or both<sup>8</sup>. No offence is committed under this provision<sup>9</sup>, however, where the discharge of trade or sewage effluent to a stream is in accordance with a statutory consent<sup>10</sup>. A person is not guilty of an offence<sup>11</sup> for any act done in the exercise of any right to which he is by law entitled or in continuance of a method in use in connection with the same premises before 18th July 1923<sup>12</sup> if he proves to the court's satisfaction that he has used the best practicable means, within a reasonable cost, to prevent such matter from doing injury to fish or to the spawning grounds, spawn or food of fish<sup>13</sup>.

1 As to the control of water pollution see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 23 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 25. As to the provisions relating to the quality of fresh waters needing protection or improvement in order to support fish life see WATER AND WATERWAYS vol 100 (2009) PARA 25. As to the pollution of sea fisheries see para 962 post.

2 *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA. An anglers' association has a sufficient common interest with its individual members who are occupiers of a several fishery in order to justify its maintenance of a pollution action brought by them: *Martell v Consett Iron Co Ltd* [1955] Ch 363, [1955] 1 All ER 481, CA. See also para 962 post. As to several fisheries see para 805 ante.

3 A person 'causes to flow' who intentionally does that which is calculated according to the ordinary course of things and the law of nature to produce such flow: see *Kirkheaton District Local Board v Ainley, Sons & Co* [1892] 2 QB 274 at 283, CA, per Bowen LJ. If he is not aware of the escape, he is not guilty of causing to flow: *Moses v Midland Rly Co* (1915) 84 LJBK 2181. See, however, *Alphacell Ltd v Woodward* [1972] AC 824, [1972] 2 All ER 475, HL, where the appellants failed to ensure that apparatus worked so as to prevent the overflow of polluted water from entering the river. See also *Price v Cromack* [1975] 2 All ER 113, [1975] 1 WLR 988, DC ('causing' requires some positive act); and see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291.

4 As to the meaning of 'tributary' see the following cases decided on ministerial orders defining fishery districts in which it was decided that a tributary included a tributary of a tributary (*Hall v Reid* (1882) 10 QBD 134n, DC; *Evans v Owens* [1895] 1 QB 237, DC; but see *Merricks v Cadwallader* (1881) 51 LJMC 20, DC, a special case based on the ejusdem generis rule), or a pond formed by damming up a stream and so broadening it without diverting its ultimate course (*Cook v Clareborough* (1903) 70 JP 252), or a mill pond (*Moses v Iggo* [1906] 1 KB 516, DC); but not a reservoir formed from a tributary (*Harbottle v Terry* (1882) 10 QBD 131, DC; *George v Carpenter* [1893] 1 QB 505; and see *Stead v Nicholas* [1901] 2 KB 163, DC).

5 Salmon and Freshwater Fisheries Act 1975 s 4(1). The offence is one of strict liability: see *Champion v Maughan* [1984] 1 All ER 680, [1984] 1 WLR 469. See also the Water Resources Act 1991 s 85; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291. Proceedings under the Salmon and Freshwater Fisheries Act 1975 s 4 (as amended) may not be instituted except by the Environment Agency or by a person who has first obtained a certificate from the Secretary of State or the Welsh Ministers that he has a material interest in the waters alleged to be affected: s 4(3) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). See further para 930 post. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. As to the Secretary of State and the Welsh Ministers see para 846 ante.

6 See the text and notes 9-13 infra.

7 As to the prescribed sum see para 849 note 15 ante.

8 Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 1(1), Table.

9 *le ibid* s 4(1).

10 A person will not be guilty of an offence under the Salmon and Freshwater Fisheries Act 1975 s 4 (as amended) in respect of any entry of matter into any controlled waters (within the meaning of the Water Resources Act 1991 Pt III) which occurs: (1) under and in accordance with a consent under Pt III Ch II; or (2) as a result of any act or omission under and in accordance with such a consent: Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1.

11 *le* under the Salmon and Freshwater Fisheries Act 1975 s 4(1).

12 *le* the date of the passing of the Salmon and Freshwater Fisheries Act 1923.

13 Salmon and Freshwater Fisheries Act 1975 s 4(2).

## UPDATE

### **916-917 Explosives, poisons, electrical devices and malicious injury, Pollution generally**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) PARA 196A.

### **917 Pollution generally**

TEXT AND NOTES 5, 13--Salmon and Freshwater Fisheries Act 1975 s 4(1) amended, s 4(2) repealed: Marine and Coastal Access Act 2009 s 233(2)(a), Sch 22 Pt 5.

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### **918. Oil contamination.**

An offence is committed if any oil or mixture containing oil is discharged into the sea within the seaward limits of the territorial waters<sup>1</sup> of the United Kingdom<sup>2</sup> or into any other waters (including inland waters<sup>3</sup>) which are within those limits and are navigable by sea-going ships<sup>4</sup>. A person guilty of this offence<sup>5</sup> is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine<sup>6</sup>. Proceedings for such an offence may be instituted by the Secretary of State or a person authorised by any general or special direction of the Secretary of State<sup>7</sup>.

Where, as a result of any occurrence, any oil is discharged or escapes from a ship, the owner of the ship is liable for any damage caused in the territory of the United Kingdom by contamination and for the cost of any measures taken to prevent or minimise such damage and for any damage caused by any measures so taken<sup>8</sup>.

- 1 As to territorial waters see WATER AND WATERWAYS vol 100 (2009) PARA 31.
- 2 For the meaning of 'the United Kingdom' see para 658 note 2 ante.
- 3 For the meaning of 'inland waters', cf para 894 note 3 ante.
- 4 See the Prevention of Oil Pollution Act 1971 s 2(1), (2) (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 348-352. As to the defences and exemptions see s 6 (as amended), s 23 (as substituted); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 350, 351, 356. As to maritime oil pollution see para 962 post.
- 5 As to the persons who are guilty of the offence and the circumstances in which they are guilty see *ibid* s 2(1)(c)-(e); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 348.
- 6 See *ibid* s 2(4); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 348.
- 7 See *ibid* s 19(1)(c); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 355. Proceedings may also be brought by or with the consent of the Attorney General or, in some cases, a harbour authority: see s 19(1)(a), (b); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 355. If a local fisheries committee or any of its officers is authorised by the Secretary of State under s 19(1), the committee may institute proceedings for any offence under the Prevention of Oil Pollution Act 1971 committed within the committee's district: see s 19(6). As to local fisheries committees and their powers see para 964 et seq post. As to the Secretary of State see para 846 ante.
- 8 See the Merchant Shipping Act 1995 ss 153, 154 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 443, 444. As to liability for oil pollution see further ss 152-171 (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 441 et seq. See *Landcatch Ltd v International Oil Pollution Compensation Fund* [1999] 2 Lloyd's Rep 316, Inner House (owner of polluting ship not liable for economic loss to fishermen caused by government restrictions on sale of fish caught in polluted area because such loss not directly caused by the contamination itself).

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## **919. Radioactive waste.**

There are statutory restrictions<sup>1</sup> whereby no person may dispose of any radioactive waste<sup>2</sup> on or from any premises which are used for the purposes of an undertaking carried on by him, without authorisation<sup>3</sup>. In such cases, before granting an authorisation the Environment Agency must consult with such local authorities, the Health and Safety Executive, the Food Standards Agency and relevant water bodies or other public or local authorities as appear to be proper to be consulted<sup>4</sup>.

1 I.e the restrictions contained in the Radioactive Substances Act 1993 s 13(1): see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1450.

2 The restriction only applies if he knows or has reasonable grounds for believing it to be radioactive waste: see *ibid* s 13(1); and FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1450. For the meaning of 'radioactive waste' see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1450.

3 See *ibid* s 13(1); and FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1450. The Environment Agency is the body that determines authorisation applications in England and Wales: see s 47(1) (definition added by the Environment Act 1995 s 120, Sch 22 para 227(2), (7)).

4 See the Radioactive Substances Act 1993 s 16(4A), (5) (as added and amended); and FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1453. Relevant water bodies for England and Wales means a water undertaker, a sewerage undertaker or a local fisheries committee: s 47(1) (definition amended by the Environment Act 1995 s 120, Sch 22 para 227(6), Sch 24); and see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999; WATER



AND WATERWAYS vol 100 (2009) PARA 134 et seq. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. As to the Food Standards Agency see FOOD vol 18(2) (Reissue) para 225 et seq.

## UPDATE

### 919 Radioactive waste

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## F. SPAWNING BEDS, STOCKING AND SCREENS

### 920. Spawn and spawning fish.

Any person, who, except in the exercise of a legal right to take materials<sup>1</sup> from any waters, wilfully<sup>2</sup> disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, is guilty of an offence<sup>3</sup>. However, a person is not guilty of such an offence in respect of any act if he does the act for the purpose of the artificial propagation of salmon, trout or freshwater fish or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous written permission of the Environment Agency<sup>4</sup>.

A person is also guilty of an offence if he introduces any fish or spawn of fish into an inland water<sup>5</sup>, or has in his possession any fish or spawn of fish intending to introduce it into an inland water, unless he first obtains the written consent<sup>6</sup> of the Environment Agency or the inland water is one which consists exclusively of a fish farm and which, if it discharges into another inland water, does so only through a conduit constructed or adapted for the purpose<sup>7</sup>.

1 See eg the Land Drainage Act 1991; the Water Resources Act 1991 Pt IV; and WATER AND WATERWAYS.

2 The word 'wilfully' amounts to an intention to disturb. A defence only exists if there is a consent or the disturbance is in the exercise of a legal right to take materials. The fact that a defendant owns the bed of the river and was entitled to walk across it was not a defence: *National Rivers Authority v Jones* (1992) Times, 10 March.

3 Salmon and Freshwater Fisheries Act 1975 s 2(4). As to the penalties and proceedings for offences see para 924 et seq post.

4 Ibid s 2(5) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

5 For the meaning of 'inland water' see para 854 note 3 ante.

6 The consent must be in writing; oral consent is not sufficient: see *Epping Forest District Council v Essex Rendering Ltd* [1983] 1 All ER 359, [1983] 1 WLR 158, HL.

7 Salmon and Freshwater Fisheries Act 1975 s 30 (amended by the Salmon Act 1986 s 34; the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 ss 105, 120(3), 190(3), Sch 15 paras 2, 17, Sch 24).

See para 921 post. As to the penalties and proceedings for offences see para 924 et seq post. As to stocking in fish farms see para 921 post.

## **UPDATE**

### **920-925 Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **920-923 Spawning Beds. Stocking and Screens**

The appropriate national authority may make regulations prohibiting persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation: see Marine and Coastal Access Act 2009 s 232.

### **920 Spawn and spawning fish**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 4--Salmon and Freshwater Fisheries Act 1975 s 2(5) further amended: Marine and Coastal Access Act 2009 s 216(5).

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Salmon and Freshwater Fisheries Act 1975 s 2 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

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### **921. Stocking fish.**

Any person who introduces any fish or spawn of fish into an inland water or has in his possession any fish or spawn of fish intending to introduce it into an inland water, unless he first obtains written consent of the Environment Agency<sup>1</sup> is guilty of an offence<sup>2</sup>. An offence is not committed where the introduction is into a fish farm<sup>3</sup>.

If a person releases or allows to escape into the wild<sup>4</sup> any animal<sup>5</sup> which is not ordinarily resident in and is not a regular visitor to Great Britain<sup>6</sup> or is a specified species of animal<sup>7</sup> he is guilty of an offence<sup>8</sup>. It is a defence to the offence to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence<sup>9</sup>.

1 The consent must be in writing; oral consent is not sufficient: see *Epping Forest District Council v Essex Rendering Ltd* [1983] 1 All ER 359, [1983] 1 WLR 158. As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 See the Salmon and Freshwater Fisheries Act 1975 s 30 (as amended); and para 920 ante. As to the penalties and proceedings for offences see para 924 et seq post.

3 See ibid s 30 (as amended); and para 920 ante. As to stocking on fish farms see further para 952 post.

4 The word 'wild' is not defined in the Wildlife and Countryside Act 1981. It is submitted that an introduction of fish or spawn would not be unlawful if it was made to an artificial pond which was not connected to any watercourse. The stocking of non-native species in a fish farm may also not constitute the release of a wild animal if it (or its progeny) cannot escape from that fish farm: see further para 952 post.

5 'Animal' is not specifically defined in the Wildlife and Countryside Act 1981; but fish are included in the list of animals in s 14, Sch 9 Pt I: see ANIMALS vol 2 (2008) PARA 1024.

6 For the meaning of 'Great Britain' see para 843 note 1 ante.

7 Is an animal included in the Wildlife and Countryside Act 1981 Sch 9 Pt I.

8 See ibid s 14(1); and ANIMALS vol 2 (2008) PARA 1024. A person guilty of this offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: see s 21(4).

9 Ibid s 14(3). See *Hurley v Martinez and Co Ltd* (1990) 154 JP 821 (defendant had taken all reasonable precautions and exercised all due diligence to avoid the commission of an offence under the Trade Descriptions Act 1968).

## UPDATE

### **920-925 Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **920-923 Spawning Beds. Stocking and Screens**

The appropriate national authority may make regulations prohibiting persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation: see Marine and Coastal Access Act 2009 s 232.

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## **922. Screens.**

Statutory obligations are imposed on a responsible person<sup>1</sup> where, by means of conduit or artificial channel, water is diverted from waters frequented by salmon<sup>2</sup> or migrating trout<sup>3</sup> and any of the diverted water is used for the purposes of a water or canal undertaking or any mill or

fish farm<sup>4</sup>. The responsible person must (unless an exemption from the obligation is granted by the Environment Agency<sup>5</sup>) ensure (at his own cost) that there is placed and maintained at the entrance of or within the conduit or channel, a screen<sup>6</sup> which prevents the descent of salmon or migratory trout<sup>7</sup> and, where the water diverted is used for a fish farm, prevents the egress of farmed fish from the fish farm by way of the conduit or channel<sup>8</sup>. Identical obligations apply to the outfall of any such conduit or channel where a screen is placed within any conduit or channel<sup>9</sup>.

Where a screen is placed within any conduit or channel<sup>10</sup>, the responsible person must ensure a continuous by-wash<sup>11</sup> is provided immediately upstream of the screen by means of which salmon or migratory trout may return by as direct a route as practicable to the waters from which they entered the conduit or channel<sup>12</sup>.

It is an offence if a person who is required to do so<sup>13</sup> fails to ensure that a screen is placed or maintained or that a by-wash is provided<sup>14</sup>. It is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or persons under his control<sup>15</sup>. Where the person relying on the defence alleges that the commission of the offence was due to an act or default or the offence was due to an act or default of another or to reliance on information supplied by another, notice must be given of this allegation to the prosecutor<sup>16</sup>.

These statutory obligations<sup>17</sup> (except in relation to farmed fish) do not apply during any period in each year as may be prescribed by byelaw<sup>18</sup>; nor do they apply where the conduit or channel was constructed before 18 July 1923<sup>19</sup>.

1 A 'responsible person' means the owner of the water or canal undertaking or the occupier of the mill or the owner or occupier of the fish farm: Salmon and Freshwater Fisheries Act 1975 s 14(1) (s 14 substituted by the Environment Act 1995 s 105, Sch 15 para 13). As to the meaning of 'occupier' see para 871 note 17 ante; as to the meaning of 'owner' see para 861 note 4 ante; and as to the meaning of 'mill' see para 851 note 13 ante. For the meaning of 'fish farm' see para 895 note 4 ante; definition applied by the Salmon and Freshwater Fisheries Act 1975 s 41.

2 For the meaning of 'salmon' see para 848 note 1 ante.

3 For the meanings of 'trout' and 'migratory trout' see para 848 note 2 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 14(1) (as substituted: see note 1 supra).

5 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post. Any exemption granted may include conditions: see *ibid* s 14(7) (as substituted: see note 1 supra).

6 'Screen' means a grating or other device which, or any apparatus the operation of which, prevents the passage of salmon or migratory trout, and if the screen is required in connection with a fish farm, the passage of any fish farmed at that fish farm, or any combination of devices or apparatus which, taken together, achieve that result: *ibid* s 41(1) (definition added by the Environment Act 1995 s 105, Sch 15 para 20(b)). Any reference to a screen being placed and maintained includes, in a case where the screen takes the form of apparatus the operation of which prevents the passage of migratory fish in question, a reference to ensuring the apparatus is kept in continuous operation: Salmon and Freshwater Fisheries Act 1975 s 14(14) (as substituted: see note 1 supra).

7 *Ibid* s 14(2)(a) (as substituted: see note 1 supra).

8 *Ibid* s 14(2)(b) (as substituted: see note 1 supra). No such screen may be placed so as to interfere with the passage of boats on any navigable canal: s 14(6) (as so substituted).

9 See *ibid* s 14(3) s 14(15) (as substituted: see note 1 supra).

10 *Ie* pursuant to *ibid* s 14(2) (as substituted): see the text and notes 5-8 supra.

11 'By-wash' means a passage through which water flows: *ibid* s 14(15) (as substituted: see note 1 supra).

12 Ibid s 14(4) (as substituted: see note 1 supra). Any screen placed or by-wash constructed must be so constructed or located as to ensure, so far as reasonably practicable, that salmon or migratory trout are not injured in it: s 14(5) (as so substituted).

13 Ie required by ibid s 14 (as substituted): see s 14(8) (as substituted: see note 1 supra).

14 Ibid s 14(8) (as substituted: see note 1 supra).

15 Ibid s 14(9) (as substituted: see note 1 supra).

16 See ibid s 14(10) (as substituted: see note 1 supra). Any reference to appearing before a court for the purposes of s 14(10) (as substituted) includes a reference to being brought before the court: s 14(11) (as so substituted).

17 Ie ibid s 14(2)-(6) (as substituted): see the text and notes 5-12 supra.

18 Ibid s 14(12) (as substituted: see note 1 supra).

19 Ibid s 14(13) (as substituted: see note 1 supra).

## **UPDATE**

### **920-925 Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **920-923 Spawning Beds. Stocking and Screens**

The appropriate national authority may make regulations prohibiting persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation: see Marine and Coastal Access Act 2009 s 232.

### **922 Screens**

NOTE 1--'Fish farm' (1) means a pond, stew, hatchery or other place used for keeping, with a view to their sale or to their transfer to other water, including another fish farm, live fish, live eggs of fish, or foodstuff of fish; (2) and includes any buildings used in connection with a place mentioned in head (1) and the banks and margins of any water in such a place: Salmon and Freshwater Fisheries Act 1975 s 41(1) (amended by the Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463).

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### **923. Environment Agency's power to use screens to control movement of fish.**

The Environment Agency<sup>1</sup> may: (1) cause a screen<sup>2</sup> or screens of such form and dimensions as it may determine to be placed and maintained at its own expense at a suitable place in any watercourse, mill race, cut, leat, conduit or other channel for conveying water for any purpose from any waters frequented by salmon<sup>3</sup> or migratory trout<sup>4</sup>; (2) cause any watercourse, mill race, cut, leat, conduit or other channel in which a screen is placed under this power to be widened or deepened at the Agency's expense, so far as may be necessary to compensate for the diminution of any flow of water caused by the placing of the screen, or must take some other means to prevent the flow of water being prejudicially diminished or otherwise injured<sup>5</sup>; (3) adopt such means as in its opinion is necessary for preventing the ingress of salmon or trout into waters in which they or their spawning beds or ova, from the nature of the channel or other causes, are liable to be destroyed<sup>6</sup>.

A person commits an offence<sup>7</sup> if he injures any such screen<sup>8</sup>, or removes it or part of it<sup>9</sup>, or opens it improperly<sup>10</sup>, or permits it to be injured or removed<sup>11</sup>. If any person obstructs a person legally authorised whilst doing any act authorised by these provisions<sup>12</sup>, he is guilty of an offence<sup>13</sup>. If any injury is caused by anything done by the Agency under these provisions<sup>14</sup>, any person sustaining any loss as a result may recover compensation from the Agency<sup>15</sup>.

The Agency must not do any work under these provisions<sup>16</sup> unless reasonable notice of its intention to do so has been served on the owner and occupier of the watercourse etc, and the Agency must take into consideration any objections before doing the proposed work<sup>17</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

2 For the meaning of 'screen' see para 922 note 6 ante.

3 For the meaning of 'salmon' see para 848 note 1 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 15(1)(a) (s 15 amended by the Environment Act 1995 ss 105, 120(3), Sch 15 paras 2, 14, Sch 24)). For the meanings of 'trout' and 'migratory trout' see para 848 note 2 ante.

Nothing in the Salmon and Freshwater Fisheries Act 1975 s 15 (as amended) is to: (1) affect the liability of any person to place and maintain a screen under the Act (see para 922 ante) (s 15(4)(a) (as so amended)); or (2) authorise a screen to be so placed or maintained during any period of the year during which under a byelaw gratings need not be maintained (s 15(4)(b) (as so amended)); or (3) authorise any screen to be placed or maintained so as to obstruct any conduit or channel used for navigation or in any way interfere with the effective working of any mill (s 15(4)(c) (as so amended)). The Secretary of State's consent is required for works below high water mark: see para 863 post.

5 Ibid s 15(1)(b) (as amended: see note 4 supra). As to the effect of s 15 (as amended) see note 4 supra.

6 Ibid s 15(3) (as amended: see note 4 supra). As to the effect of s 15 (as amended) see note 4 supra. Nothing in s 15(3) (as amended) authorises the Environment Agency prejudicially to interfere with water rights used or enjoyed for the purposes of manufacturing or for milling purposes or for drainage or navigation: s 15(4) (as so amended).

7 As to the penalties and proceedings for offences see para 924 et seq post.

8 Salmon and Freshwater Fisheries Act 1975 s 15(2)(a) (as amended: see note 4 supra).

9 Ibid s 15(2)(b) (as amended: see note 4 supra). This prohibition on removal does not apply during any period of the year during which under a byelaw screens need not be maintained: s 15(2)(b) (as so amended).

10 Ibid s 15(2)(c) (as amended: see note 4 supra). 'Open' includes the doing of anything which interrupts, or otherwise interferes with, the operation of the apparatus: s 15(5) (added by the Environment Act 1995 Sch 15 para 14).

11 Salmon and Freshwater Fisheries Act 1975 s 15(2)(d) (as amended: see note 4 supra).

12 Ie authorised by ibid s 15 (as amended): see the text and notes 1-11 supra.

13 Ibid s 18(1). As to the penalties and proceedings for offences see para 924 post.

14 le under the powers conferred by *ibid* s 15 (as amended): see the text and notes 1-11 *supra*.

15 *Ibid* s 18(3) (amended by the Environment Act 1995 Sch 15 para 2). The amount of the compensation is to be settled in case of dispute by a single arbitrator appointed by the Secretary of State: Salmon and Freshwater Fisheries Act 1975 s 18(4). As to the Secretary of State see para 846 *ante*. In any case in which the Environment Agency is liable to pay compensation, it is not recoverable unless proceedings for its recovery are instituted within two years from the completion of the work: s 18(5) (amended by the Environment Act 1995 Sch 15 para 2).

16 le under the Salmon and Freshwater Fisheries Act 1975 s 15 (as amended): see the text and notes 1-11 *supra*.

17 *Ibid* s 18(2) (substituted by the Environment Act 1995 Sch 15 para 16).

## UPDATE

### **920-925 Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **920-923 Spawning Beds. Stocking and Screens**

The appropriate national authority may make regulations prohibiting persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation: see Marine and Coastal Access Act 2009 s 232.

### **923 Environment Agency's power to use screens to control movement of fish**

NOTE 15--Salmon and Freshwater Fisheries Act 1975 s 18(4) amended: Marine and Coastal Access Act 2009 Sch 16 para 7 (in force 1 January 2011: SI 2010/298).

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## **(viii) Proceedings for Offences**

### **924. Penalties for offences.**

A person guilty of an offence against any provision of the Salmon and Freshwater Fisheries Act 1975 is liable on summary conviction to a fine not exceeding level 4 on the standard scale except where in specific instances other penalties are prescribed<sup>1</sup>.

The court by which a person is convicted of an offence against any of these provisions may order the forfeiture of any fish illegally taken by him or in his possession at the time of the offence and of any instrument, bait or other thing used in the commission of the offence<sup>2</sup>. If the

conviction is on indictment, the convicting court may also order the forfeiture of any vessel or vehicle<sup>3</sup> used in or in connection with the commission of the offence or in which any substance or device unlawfully in the offender's possession was contained at the time of the offence<sup>4</sup>. Any object forfeited under these powers may be disposed of as the court thinks fit<sup>5</sup>.

If a person is convicted of an offence against the Act, the court may order that any fishing or general licence<sup>6</sup> held by him is to be forfeited and that he is to be disqualified from holding and obtaining a fishing or general licence or from fishing either in a particular area or generally by virtue of a fishing or general licence for such period not exceeding five years as the court thinks fit<sup>7</sup>.

A person who is prosecuted for an offence against the Act and who is the holder of a fishing or general licence must either: (1) cause it to be delivered to the proper officer not later than the day before the date appointed for the hearing<sup>8</sup>; or (2) post it, at such a time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the proper officer and either registered or sent by the recorded delivery service<sup>9</sup>; or (3) have it with him at the hearing<sup>10</sup>. If he is convicted of the offence and the court makes a disqualification order<sup>11</sup>, the court must order the licence to be surrendered to it<sup>12</sup>. If the offender has not posted the licence or caused it to be delivered, and does not surrender it as required, he is guilty of an offence and the licence must be revoked from the time when its surrender was ordered<sup>13</sup>.

Where a court orders a fishing or general licence to be surrendered to it, or where by order of a court<sup>14</sup> a person is disqualified for holding or obtaining a licence, the court must: (a) send notice of the order to the Environment Agency (unless the Agency prosecuted in the case)<sup>15</sup>; and (b) if the licence has been so surrendered, retain it and forward it to the Agency, which may dispose of it as it thinks fit<sup>16</sup>. Where any person is convicted of an offence against the Act, the proper officer of the convicting court, within one month of the date of conviction, must forward a certificate of the conviction to the Agency<sup>17</sup>.

1 Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 1(2) (amended by virtue of the Criminal Justice Act 1982 s 46). The offences for which specific penalties are prescribed by the Salmon and Freshwater Fisheries Act 1975 (see Sch 4 para 1(1), Table) are those under s 1 (see paras 848-849 ante); s 4 (as amended) (see para 917 ante); s 5(1), (3) (as amended) (see para 916 ante); s 19(2), (4), (6), (7) (see paras 857, 869-871, 874 ante); s 21 (as amended) (see para 872 ante); and s 27 (see para 864 ante). As to the standard scale see para 841 note 4 ante.

2 Ibid Sch 4 para 5(a), (b). As to the forfeiture of a substance or device possessed in contravention of s 5 see para 916 ante. Where any fish or any other thing of a perishable nature is seized as liable to forfeiture under Sch 4 para 5, the person by whom it is seized may sell it, and the net proceeds of sale are liable to forfeiture in the same manner as the fish or other thing sold, and if and so far as not forfeited must be paid on demand to the owner: Sch 4 para 8. However, no person is subject to any liability on account of his neglect or failure to exercise the powers conferred on him by this provision: Sch 4 para 8. As to powers of seizure see paras 879 ante, 936 post.

3 In relation to any vessel or vehicle liable to forfeiture under *ibid* Sch 4 para 5, the Customs and Excise Management Act 1979 Sch 3 applies as it applies in relation to anything liable to forfeiture under that Act; but in its application to any such vessel or vehicle Sch 3 is subject to certain modifications: see the Salmon and Freshwater Fisheries Act 1975 Sch 4 para 6 (amended by the Customs and Excise Management Act 1979 s 177, Sch 4 para 12; the Water Act 1989 s 190(3), Sch 27 Pt I; and the Environment Act 1995 s 105, Sch 15 para 2). See also CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 1156 et seq.

4 Salmon and Freshwater Fisheries Act 1975 Sch 4 para 5(d).

5 Ibid Sch 4 para 5.

6 As to licences see para 864 ante.

7 Salmon and Freshwater Fisheries Act 1975 Sch 4 para 9 (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (15), Sch 27 Pt I).

8 Salmon and Freshwater Fisheries Act 1975 Sch 4 para 10(a) (Sch 4 para 10(a), (b) amended by the Access to Justice Act 1999 s 90(1), Sch 13 para 86(1), (2)). As to the 'proper officer' see the Salmon and Freshwater Fisheries Act 1975 Sch 4 para 14 (added by the Access to Justice Act 1999 Sch 13 para 86(1), (3)).



- 9 Salmon and Freshwater Fisheries Act 1975 Sch 4 para 10(b) (as amended: see note 8 supra).
- 10 Ibid Sch 4 para 10(c).
- 11 Ie an order under ibid Sch 4 para 9 (as amended): see the text and note 7 supra.
- 12 Ibid Sch 4 para 10.
- 13 Ibid Sch 4 para 10.
- 14 Ie by order under ibid Sch 4 para 9 (as amended): see the text and note 7 supra.
- 15 Ibid Sch 4 para 11(a) (amended by the Water Act 1989 Sch 27 Pt I; and the Environment Act 1995 Sch 15 para 2).
- 16 Salmon and Freshwater Fisheries Act 1975 Sch 4 para 11(b).
- 17 Ibid Sch 4 para 12 (amended by the Water Act 1989 Sch 27 Pt I; the Access to Justice Act 1999 Sch 13 para 86(1), (2); and the Environment Act 1995 Sch 15 para 2). Such a certificate is mat be received in evidence in all legal proceedings: Salmon and Freshwater Fisheries Act 1975 Sch 4 para 13.

## UPDATE

### **920-925 Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **924 Penalties for offences**

TEXT AND NOTES--Salmon and Freshwater Fisheries Act 1975 Sch 4 further amended and repealed in part: Marine and Coastal Access Act 2009 Sch 16 para 17, Sch 22 Pt 5 (all in force by 1 January 2011: SI 2009/3345, SI 2010/298).

NOTE 1--Salmon and Freshwater Fisheries Act 1975 Sch 4 para 1(2), Table amended: Marine and Coastal Access Act 2009 s 220(9).

Salmon and Freshwater Fisheries Act 1975 Sch 4 para 1(2), Table further amended: Marine and Coastal Access Act 2009 s 219(3) (in force on 1 January 2011: SI 2010/298).

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### **925. Fixed penalty notices for certain offences.**

In parallel with the system of statutory penalties for offences under the Salmon and Freshwater Fisheries Act 1975<sup>1</sup>, there is also a system of fixed penalties<sup>2</sup>. Where a water bailiff<sup>3</sup> or other officer of the Environment Agency<sup>4</sup> finds a person who he has reason to believe is committing or has on that occasion committed a fixed penalty offence<sup>5</sup> he may give that person a fixed

penalty notice<sup>6</sup> offering him the opportunity of discharging any liability to conviction by payment of a fixed penalty<sup>7</sup>.

A fixed penalty notice must give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence<sup>8</sup>. The fixed penalty notice must state: (1) the monetary amount of the fixed penalty which may be paid; (2) the person to whom and the address at which the fixed penalty may be paid, and the address to which any correspondence relating to the fixed penalty notice may be sent; (3) the method or methods by which payment of the fixed penalty may be made; (4) the period for paying the fixed penalty; and (5) the consequences of the fixed penalty not being paid before the expiration of that period<sup>9</sup>.

Where a person is given a fixed penalty notice in respect of a fixed penalty offence no proceedings are to be commenced for that offence before the expiration of the period for paying the fixed penalty<sup>10</sup> and he may not be convicted if the penalty is paid before the expiration of the period<sup>11</sup>. If, in any particular case, the Environment Agency considers that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom the fixed penalty notice was given a notice withdrawing the fixed penalty notice<sup>12</sup>. Where such a withdrawal notice is given the Environment Agency must repay any amount which has already been paid by way of fixed penalty in pursuance of the fixed penalty notice, and no proceedings may be instituted or continued against that person for the offence in question<sup>13</sup>.

In any proceedings a certificate purporting to be signed for or on behalf of the chief executive of the Environment Agency<sup>14</sup> stating that either a fixed penalty was or was not received or that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on the date specified in the certificate is to be received as evidence of the matters so stated and is to be treated, without further proof, as being so signed unless the contrary is shown<sup>15</sup>.

1 See para 924 ante.

2 See the Salmon and Freshwater Fisheries Act 1975 s 37(A) (added by the Environment Act 1995 s 104(1)); and the text and notes 3-15 infra. 'Fixed penalty' means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations made by the Secretary of State under the Salmon and Freshwater Fisheries Act 1975 s 37A (as added)): s 37A(10) (as so added). Regulations may make different provision in relation to different cases or classes of case, or provide for such exceptions, limitations and conditions, or make such incidental, supplemental, consequential or transitional provision, as the Secretary of State considers necessary or expedient: s 37A(14) (as so added). Any power to make regulations under s 37A (as added) is exercisable by statutory instrument made by the Secretary of State; and a statutory instrument containing any such regulations is subject to annulment pursuant to a resolution of either House of Parliament: s 37A(15) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see para 846 ante. Note that the functions under s 37A (as added) have not been transferred to the Welsh Ministers: see para 846 ante.

3 As to water bailiffs see para 934 et seq post.

4 As to the fisheries functions of the Environment Agency see paras 847 ante, 930 et seq post.

5 'Fixed penalty offence' means any offence:

- (1) under the Salmon and Freshwater Fisheries Act 1975;
- (2) under the Salmon Act 1986;
- (3) under or by virtue of regulations or orders made under the Water Resources Act 1991 s 115, s 116 or s 142 (see paras 939-940 post); or
- (4) under the Water Resources Act 1991 s 211(3), so far as relating to byelaws made by virtue of Sch 25 para 6 (see paras 932-933 post),

which is for the time being prescribed by regulations made by the Secretary of State under the Salmon and Freshwater Fisheries Act 1975 s 37A (as added) for the purpose: s 37A(10) (as added: see note 2 supra).

The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence: (a) only if it is committed in such circumstances or manner as may be prescribed; or (b) except if it is committed in such circumstances or manner as may be prescribed: s 37A(11) (as so added). Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence: s 37A(12) (as so added). An offence which has ceased to be a fixed penalty offence is, however, eligible to be prescribed as such an offence again: s 37A(13) (as so added).

6       le a notice in writing: see *ibid* s 37A(10) (as added: see note 2 supra).

Regulations may make provision with respect to the giving of fixed penalty notices, including, in particular, provision with respect to the methods by which, the officers, servants or agents by, to or on whom, and the places at which, fixed penalty notices may be given by, or served on behalf of, a water bailiff or other officer of the Environment Agency: s 37A(9)(a) (as so added). Regulations may also prescribe the method or methods by which fixed penalties may be paid (s 37A(9)(b) (as so added)), and make provision for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given (s 37A(9)(c) (as so added)).

7       Ibid s 37A(1) (as added: see note 2 supra).

8       Ibid s 37A(7) (as added: see note 2 supra).

9       Ibid s 37A(7)(a)-(e) (as added: see note 2 supra). A fixed penalty notice may also contain such other information relating to, or for the purpose of facilitating, the administration of the fixed penalty system as the Environment Agency considers necessary or desirable: s 37A(8) (as so added).

10       Ibid s 37A(2)(a) (as added: see note 2 supra). The Environment Agency may extend the period for paying the fixed penalty if it considers it appropriate to do so: see s 37A(3) (as so added).

11       Ibid s 37A(2)(b) (as added: see note 2 supra).

12       Ibid s 37A(4) (as added: see note 2 supra).

13       Ibid s 37A(4)(a), (b) (as added: see note 2 supra). The amount by which the sums received by the Environment Agency by way of fixed penalties exceed the sums repaid by it under s 37A(4)(a) (as added) must be paid into the Consolidated Fund: s 37A(5) (as so added).

14       See *ibid* s 37A(6) (as added: see note 2 supra).

15       Ibid s 37A(6)(a), (b) (as added: see note 2 supra).

## UPDATE

### **920-925   Spawn and spawning fish ... Fixed penalty notices for certain offences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **925   Fixed penalty notices for certain offences**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 5--Head (4). Water Resources Act 1991 s 211(3) amended: Marine and Coastal Access Act 2009 s 226.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(viii) Proceedings for Offences/926. Enforcement of the Fisheries Acts.

## **926. Enforcement of the Fisheries Acts.**

Powers of enforcement conferred by statutes relating to salmon and freshwater fisheries upon any authorities or officers are not to be construed as limiting or taking away the power of any other person to take legal proceedings for the enforcement of any such statute or of any byelaw made under it<sup>1</sup>.

<sup>1</sup> Fisheries Act 1891 s 13 (amended by the Sea Fisheries Regulation Act 1966 s 21, Schedule Pt I; and the Sea Fisheries Act 1968 s 22(1), (2), Sch 1 Pt II, Sch 2 Pt II). See also *Pollock v Moses* (1894) 70 LT 378, DC.

### **UPDATE**

#### **926-927 Enforcement of the Fisheries Acts, Territorial jurisdiction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **926 Enforcement of the Fisheries Acts**

TEXT AND NOTE 1--Fisheries Act 1891 s 13 repealed: Marine and Coastal Access Act 2009 s 234(c), Sch 22 Pt 5. For fisheries enforcement powers see PARA 1013A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(viii) Proceedings for Offences/927. Territorial jurisdiction.

## **927. Territorial jurisdiction.**

Any offence against the Salmon and Freshwater Fisheries Act 1975 committed on the sea coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction is to be deemed to have been committed in any place abutting on that sea coast or adjoining that sea, and may be tried and punished accordingly<sup>1</sup>.

<sup>1</sup> Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 2. The foreshore is part of the body of the county: *Embleton v Brown* (1860) 3 E & E 234. Note that offences against the Act committed in Scotland must be proceeded against and punished in Scotland: Salmon and Freshwater Fisheries Act 1975 Sch 4 para 3.

### **UPDATE**

#### **926-927 Enforcement of the Fisheries Acts, Territorial jurisdiction**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(viii) Proceedings for Offences/928. Ouster of jurisdiction.

### **928. Ouster of jurisdiction.**

Apart from any statutory provision, the jurisdiction of justices to hear and determine offences against the statutes relating to fisheries and fishing will be ousted if the act complained of was done by the defendant in the exercise of a claim or assertion of right made in good faith<sup>1</sup>.

A claim to fish as a member of the public will not oust the jurisdiction if at the place concerned the water is non-tidal though navigable, or made navigable by statute, or is a pond or lake, for in such cases there is no possible legal foundation for such a claim on behalf of the public<sup>2</sup>.

In the case of fishing in tidal waters, the presumption is that the public has a right to fish, but once the magistrates are satisfied that a several fishery exists over the place concerned, the public can have no right and the justices should try the case<sup>3</sup>.

1 *R v Stimpson* (1863) 4 B & S 301; and see MAGISTRATES vol 29(2) (Reissue) para 667.

2 See para 798 ante.

3 *Booth v Brough* (1869) 33 JP 694; *Re Brancaster Fishery* (1875) 39 JP Jo 372; *Smith v Cooke* (1914) 112 LT 864; and see also *R v Stimpson* (1863) 4 B & S 301. As to several fisheries see para 805 ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/(viii) Proceedings for Offences/929. Disqualification of justices.

### **929. Disqualification of justices.**

The justices who sit to hear and determine offences must not be interested in any way in the proceedings<sup>1</sup>. A justice is not, however, disqualified from hearing any case under the Salmon and Freshwater Fisheries Act 1975 by reason only of his being a subscriber to any society for the protection of fish, but he is not entitled to hear any case in respect of an offence committed on his own land or in relation to any fishery of which he is the owner or occupier<sup>2</sup>. In spite of this statutory provision, if the justice has been present at a meeting of the society at which the prosecution was authorised, he is disqualified from acting<sup>3</sup> unless he takes no part in the decision to prosecute<sup>4</sup>.

1 *R v Allan* (1864) 4 B & S 915; and see JUDICIAL REVIEW vol 61 (2010) PARA 632.

2 Salmon and Freshwater Fisheries Act 1975 s 37, Sch 4 para 4. As to the meaning of 'owner' see para 861 note 4 ante; and as to the meaning of 'occupier' see para 861 note 5 ante.

3 *R v Henley* [1892] 1 QB 504, DC; *R v Lee* (1882) 9 QBD 394, DC; *R v Hodgson* (1864) 28 JP 484; and see *R v Huggins* [1895] 1 QB 563. See, however, *R v Burton, ex p Young* [1897] 2 QB 468, DC (solicitor's interest not sufficient to disqualify him from adjudicating on a charge of falsely pretending to be a solicitor prosecuted by the Law Society).

4 *R v Pwllheli Justices, ex p Soane* [1948] 2 All ER 815, DC.

## UPDATE

### **929-932 Disqualification of justices ... Environment Agency's power to make byelaws**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/930. General powers of the Environment Agency.

## **(ix) Administration and Enforcement**

### **930. General powers of the Environment Agency.**

The Environment Agency<sup>1</sup> has power to do anything which in its opinion is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions<sup>2</sup>. It may take legal proceedings in respect of any offence against the Salmon and Freshwater Fisheries Act 1975, or for the protection of fisheries from injury by pollution or otherwise<sup>3</sup>. It may also obtain the services of additional constables<sup>4</sup>. The Environment Agency has statutory power to take legal proceedings for the enforcement of the Diseases of Fish Act 1937 as respects inland waters<sup>5</sup>.

1 See para 847 ante.

2 See the Environment Act 1995 s 37(1)(a). The Agency may appoint such officers and employees as it may determine (see Sch 1 para 4(1)), including water bailiffs (see para 934 et seq post). As to the powers of the Environment Agency see further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

3 It may take proceedings in respect of any offence against the Salmon and Freshwater Fisheries Act 1975 or for the enforcement of any provision of that Act or for the protection of the any fisheries from injury by pollution or otherwise: s 36(3), Sch 3 para 39(1)(a) (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (14)). The powers in the Salmon and Freshwater Fisheries Act 1975 Sch 3 para 39(1)(a), (c) (as amended) do not authorise anything to be done which may injuriously affect any navigable water, canal or inland navigation: Sch 3 para 39(2).

4 Ibid Sch 3 para 39(1)(c) (amended by the Police Act 1996 s 103(1), Sch 7 para 26). See note 3 supra. A police constable appointed under this power has all the powers and privileges of a water bailiff: Salmon and Freshwater Fisheries Act 1975 s 36(3).

5 See the Diseases of Fish Act 1937 s 8(2) (as substituted); and para 903 post. See also the Salmon Act 1986 s 32(6)(b).

## UPDATE

## **929-932 Disqualification of justices ... Environment Agency's power to make byelaws**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **930 General powers of the Environment Agency**

TEXT AND NOTE 5--Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/931. Environment Agency's power to acquire land for fisheries purposes.

### **931. Environment Agency's power to acquire land for fisheries purposes.**

The Environment Agency<sup>1</sup> may purchase or take on lease (either by agreement or, if so authorised, compulsorily) any dam<sup>2</sup>, fishing weir<sup>3</sup>, fishing mill dam<sup>4</sup>, fixed engine<sup>5</sup> or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction<sup>6</sup>. It may also purchase or take on lease in the same way so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass<sup>7</sup>. Similarly it may purchase or take on lease any fishery land or foreshore for the purpose of erecting and working a fixed engine together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired<sup>8</sup>. The Environment Agency may alter or remove an obstruction acquired in the exercise of the above-mentioned powers or by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired, subject in the case of a lease to the terms of the lease<sup>9</sup>.

1 See para 847 ante.

2 For the meaning of 'dam' see para 848 note 8 ante; definition applied by the Water Resources Act 1991 s 156(3).

3 For the meaning of 'fishing weir' see para 848 note 7 ante; definition applied by ibid s 156(3).

4 For the meaning of 'fishing mill dam' see para 848 note 8 ante; definition applied by ibid s 156(3).

5 For the meaning of 'fixed engine' see para 848 note 10 ante; definition applied by ibid s 156(3).

6 Ibid s 156(1)(a) (amended by the Environment Act 1995 s 120, Sch 22 para 128). Any works proposed to be constructed under the high water mark require the approval of the Secretary of State: see para 863 ante.

7 Water Resources Act 1991 s 156(1)(b). This power is exercisable for the purpose specified in the Salmon and Freshwater Fisheries Act 1975 s 10 (as amended) (see para 860 ante): Water Resources Act 1991 s 156(1)(b).

8 Ibid s 156(1)(c).

9 Ibid s 156(2) (amended by the Environment Act 1995 Sch 22 para 128).

**UPDATE****929-932 Disqualification of justices ... Environment Agency's power to make byelaws**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**931-933 Environment Agency's power to acquire land for fisheries purposes ... Provisions relating to byelaws**

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/932. Environment Agency's power to make byelaws.

**932. Environment Agency's power to make byelaws.**

The Environment Agency<sup>1</sup> has power<sup>2</sup> to make byelaws generally for the purpose of the better execution of the Salmon and Freshwater Fisheries Act 1975 and for the better protection, preservation and improvement of any salmon<sup>3</sup>, trout<sup>4</sup>, freshwater<sup>5</sup> or eel<sup>6</sup> fisheries<sup>7</sup>. The Agency also has powers to make byelaws for the following specific purposes:

- (1) prohibiting the taking or removal from any water, without lawful authority, of any fish, whether alive or dead<sup>8</sup>;
- (2) prohibiting or regulating: (a) the taking of trout or any freshwater fish of a size less than such as may be prescribed by the byelaw; or (b) the taking of fish by any means within such distance as is specified in the byelaw above or below any dam or any other obstruction, whether artificial or natural<sup>9</sup>;
- (3) prohibiting the use for taking salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters and at such times as may be prescribed by the byelaws<sup>10</sup>;
- (4) specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels, imposing requirements as to the use of such nets and other instruments and regulating the use, in connection with fishing with rod and line, of any lure or bait specified in the byelaw<sup>11</sup>;
- (5) authorising the placing and use of fixed engines at such places, at such times and in such manner as may be prescribed by the byelaws<sup>12</sup>;
- (6) imposing requirements as to the construction, design, material and dimensions of any such nets, instruments or engines as are mentioned in heads (4) and (5) above, including in the case of nets the size of mesh<sup>13</sup>;



- (7) requiring and regulating the attachment to licensed nets and instruments of marks, labels or numbers, or the painting of marks or numbers or the affixing of labels or numbers to boats, coracles or other vessels used in fishing<sup>14</sup>;
- (8) prohibiting the carrying in any boat or vessel whilst being used in fishing for salmon or trout of any net which is not licensed, or which is without the mark, label or number prescribed by the byelaws<sup>15</sup>;
- (9) prohibiting or regulating the carrying in a boat or vessel during the annual close season for salmon of a net capable of taking salmon, other than a net commonly used in the area to which the byelaw applies for sea fishing and carried in a boat or vessel commonly used for that purpose<sup>16</sup>;
- (10) fixing or altering any close season or close time<sup>17</sup>;
- (11) dispensing with a close season for freshwater fish or rainbow trout<sup>18</sup>;
- (12) determining for the purposes of the Salmon and Freshwater Fisheries Act 1975 the period of the year during which screens need not be maintained<sup>19</sup>;
- (13) prohibiting or regulating fishing with rod and line between the end of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning<sup>20</sup>;
- (14) determining the time during which it is lawful to use a gaff in connection with fishing with rod and line for salmon or migratory trout<sup>21</sup>;
- (15) authorising fishing with rod and line for eels during the annual close season for freshwater fish<sup>22</sup>;
- (16) regulating the deposit or discharge in any waters containing fish of any liquid or solid matter specified in the byelaw which is detrimental to salmon, trout or freshwater fish, or the spawn or food of fish<sup>23</sup>;
- (17) requiring persons to send returns to the Agency giving specified particulars of the period or periods during which they have fished for salmon, trout, freshwater fish or eels, whether they have taken any and if so, what they have taken<sup>24</sup>.

1 See para 847 ante.

2 In relation to the whole or any part or parts of the area in relation to which it carries out its functions relating to fisheries under the Salmon and Freshwater Fisheries Act 1975 Pt V (ss 29-37A) (as amended): Water Resources Act 1991 s 210, Sch 25 para 6(1) (amended by the Environment Act 1995 ss 105, 120, Sch 15 para 26, Sch 22 para 128). Byelaws made under the Water Resources Act 1991 Sch 25 para 6 (as amended) may be made to apply to the whole or any part or parts of the year: Sch 25 para 6(6).

3 For the meaning of 'salmon' see para 848 note 1 ante; definition applied by *ibid* Sch 25 para 6(7).

4 For the meaning of 'trout' see para 848 note 2 ante; definition applied by *ibid* Sch 25 para 6(7).

5 For the meaning of 'freshwater fish' see para 848 note 3 ante; definition applied by *ibid* Sch 25 para 6(7).

6 As to the meaning of 'eels' see para 848 note 27 ante; definition applied by *ibid* Sch 25 para 6(7).

7 *Ibid* Sch 25 para 6(1) (as amended: see note 2 supra). Full copies of the byelaws are available from the Environment Agency. As to the inter-relationship between the general byelaw making powers in Sch 25 para 6(1) (as amended) and the specific byelaw making powers in Sch 25 para 6(2) see *Mott v Environment Agency* (1999) Times, 25 January.

8 Water Resources Act 1991 Sch 25 para 6(2)(a). As to the meaning of 'without lawful authority' see *Mott v Environment Agency* (1999) Times, 25 January.

9 Water Resources Act 1991 Sch 25 para 6(2)(b). For the meaning of 'dam' see para 848 note 8 ante; definition applied by Sch 25 para 6(7).

10 *Ibid* Sch 25 para 6(2)(c). See also *Mott v Environment Agency* (1999) Times, 25 January. For the meaning of 'fixed engine' see para 848 note 10 ante; definition applied by the Water Resources Act 1991 Sch 25 para 6(7).

11 Ibid Sch 25 para 6(2)(d). This power may in some cases deprive the owner of the profits of his fishery: see *Onions v Clarke* (1917) 86 LJB 740 DC. For the meaning of 'rod and line' see para 848 note 6 ante; definition applied by the Water Resources Act 1991 Sch 25 para 6(7).

12 Ibid Sch 25 par 6(2)(e). A byelaw under this power may not be made in relation to any place within the sea fisheries district of a local fisheries committee except with the consent of that committee: Sch 25 para 7(1) (amended by the Environment Act 1995 Sch 22 paras 128, 190). As to sea fisheries committees see para 971 et seq post.

13 Water Resources Act 1991 Sch 25 para 6(2)(f).

14 Ibid Sch 25 para 6(2)(g).

15 Ibid Sch 25 para 6(2)(h).

16 Ibid Sch 25 para 6(2)(i). As to annual close seasons see paras 868-873 ante.

17 Ibid Sch 25 para 6(3)(a). The Environment Agency is under a duty to make byelaws fixing for the parts of the area in relation to which it carries out its functions under the Salmon and Freshwater Fisheries Act 1975 the annual close season and weekly close time for fishing by any method for salmon and for trout other than rainbow trout: s 19, Sch 1 para 1 (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (12); and the Environment Act 1995 Sch 15 paras 2, 22). See paras 868, 874 ante. Such byelaws must respect the minimum statutory periods laid down by the Salmon and Freshwater Fisheries Act 1975 subject to the Environment Agency's power to dispense altogether with a close season for freshwater fish or rainbow trout: see Sch 1 para 3. Note that the powers contained in heads (10)-(15) in the text are subject to this duty to make byelaws about close season and close time, and the powers are exercisable in relation to the whole or any part or parts of the area mentioned in note 2 supra: Water Resources Act 1991 Sch 25 para 6(3) (amended by the Environment Act 1995 Sch 15 para 26, Sch 22 para 128).

18 Water Resources Act 1991 Sch 25 para 6(3)(b). See note 17 supra.

19 Ibid Sch 25 para 6(3)(c) (amended by the Environment Act 1995 Sch 15 para 26(2)). See note 17 supra. For the meaning of 'screen' see para 922 note 6 ante; definition applied by the Water Resources Act 1991 Sch 25 para 6(7).

20 Ibid Sch 25 para 6(3)(d). See note 17 supra.

21 Ibid Sch 25 para 6(3)(e). See note 17 supra.

22 Ibid Sch 25 para 6(3)(f). See note 17 supra.

23 Ibid Sch 25 para 6(4). The Environment Agency must not make byelaws by virtue of this power so as to prejudice any powers of a sewerage undertaker to discharge sewage in pursuance of any power given by a public general Act, a local Act or a provisional order confirmed by Parliament: Sch 25 para 7(2) (amended by the Environment Act 1995 Sch 22 paras 128, 190).

24 Water Resources Act 1991 Sch 25 para 6(5).

## UPDATE

### **929-932 Disqualification of justices ... Environment Agency's power to make byelaws**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **931-933 Environment Agency's power to acquire land for fisheries purposes ... Provisions relating to byelaws**

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **932 Environment Agency's power to make byelaws**

TEXT AND NOTES--Water Resources Act 1991 Sch 25 para 6 amended and repealed in part: Marine and Coastal Access Act 2009 s 224, Sch 16 para 24, Sch 22 Pt 5. See further Water Resources Act 1991 s 210(3), Sch 27 (added by Marine and Coastal Access Act 2009 s 225(1), (2)) (emergency fisheries byelaws).

See also the Salmon and Freshwater Fisheries Act 1975 s 40A (added by Marine and Coastal Access Act 2009 s 221) which empowers the appropriate national authority to specify additional species of fish to which the Water Resources Act 1991 Sch 25 para 6 applies. See further Salmon and Freshwater Fisheries Act 1975 s 40B (added by Marine and Coastal Access Act 2009 s 222) which sets out the procedure for making an order under the Salmon and Freshwater Fisheries Act 1975 s 40A.

NOTES 12, 23--Water Resources Act 1991 Sch 25 para 7 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/933. Provisions relating to byelaws.

### **933. Provisions relating to byelaws.**

Any person who contravenes a byelaw made by the Environment Agency<sup>1</sup> is guilty of an offence<sup>2</sup>.

When made by the Environment Agency, byelaws do not have effect until confirmed by the Secretary of State or the Welsh Ministers<sup>3</sup> who may fix the date on which any byelaw which has been confirmed is to come into force; if no commencement date is fixed it will come into force at the end of the period of one month beginning with the date of confirmation<sup>4</sup>.

Where the owner or occupier<sup>5</sup> of any fishery claims by notice to the Environment Agency that the fishery is injuriously affected by any byelaw that is made for certain purposes<sup>6</sup> and the claim is made before the expiration of 12 months after the confirmation of the byelaw, then compensation may be payable<sup>7</sup>. The claim and the amount of compensation to be paid, by way of annual payment or otherwise, for the damage, if any, to the fishery is to be determined, in default of agreement, by a single arbitrator appointed by the Secretary of State or the Welsh Ministers<sup>8</sup>. When the compensation is payable under any award by way of an annual payment, the Environment Agency or the person entitled to the annual payment may, at any time after the end of five years from the date of the award, require it to be reviewed by an arbitrator appointed by the Secretary of State or the Welsh Ministers<sup>9</sup>. The compensation to be paid thenceforth is to be such as may be determined by the arbitrator<sup>10</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

2 Water Resources Act 1991 s 211(3). A person guilty of contravening a byelaw made under the powers contained in s 210, Sch 25 para 6 (as amended) (see para 932 ante) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale: s 211(3). Contravention of byelaws made under other powers

carries a different penalty depending on which power it is made under: see s 211(1), (2), (4); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS. As to the standard scale see para 841 note 4 ante.

3 Water Resources Act 1991 s 210, Sch 26 para 1(1) (amended by the Environment Act 1995 s 120, Sch 22 para 128). As to the Secretary of State and the Welsh Ministers see para 846 ante.

4 Water Resources Act 1991 Sch 26 para 3.

5 As to the meaning of 'owner' see para 861 note 4 ante; and as to the meaning of 'occupier' see para 861 note 5 ante (definitions applied by *ibid* s 212(4)).

6 This applies to byelaws made under the power to specify and impose requirements as to nets and other instruments which may be used for taking fish (see *ibid* Sch 25 para 6(2)(d); and para 932 ante) or under its power to prohibit the use of any instrument other than a fixed engine (see Sch 25 para 6(2)(c); and para 932 ante) or under its power to impose requirements as to the construction, design, materials and dimensions of any such nets or instruments including in the case of a net the size of mesh (see Sch 25 para 6(2)(f); and para 932 ante): s 212(2). For a consideration of powers to make byelaws, and as to compensation, see *Mott v Environment Agency* (1999) Times, 25 January.

7 Water Resources Act 1991 s 212(1) (amended by the Environment Act 1995 Sch 22 para 128).

8 Water Resources Act 1991 s 212(1). As to arbitration see generally ARBITRATION vol 2 (2008) PARA 1201 et seq.

9 *Ibid* s 212(3)(a) (amended by the Environment Act 1995 Sch 22 para 128).

10 Water Resources Act 1991 s 212(3)(b).

## UPDATE

### **931-933 Environment Agency's power to acquire land for fisheries purposes ... Provisions relating to byelaws**

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **933 Provisions relating to byelaws**

TEXT AND NOTE 2--Water Resources Act 1991 s 211(3) amended: Marine and Coastal Access Act 2009 s 226.

NOTE 6--Water Resources Act 1991 s 212(2) amended: Marine and Coastal Access Act 2009 Sch 16 para 23, Sch 22 Pt 5.

TEXT AND NOTES 7-10--Water Resources Act 1991 s 212(1) further amended, s 212(3) repealed: Marine and Coastal Access Act 2009 s 227, Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/934. Powers of water bailiffs.

### **934. Powers of water bailiffs.**

The Environment Agency<sup>1</sup> has power to appoint water bailiffs<sup>2</sup>. For the enforcement of the Salmon and Freshwater Fisheries Act 1975 or any order or byelaw made under it, every water

bailiff is deemed to be a constable and to have the same powers and privileges, and be subject to the same liabilities, as a constable has or is subject to by virtue of the common law or of any statute<sup>3</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

2 See the Environment Act 1995 ss 1, 37(1), Sch 1 para 4(1); and para 930 ante. See also para 935 post.

3 Salmon and Freshwater Fisheries Act 1975 s 36(1). As to the production of evidence of his appointment see para 936 post. As to the office of constable see POLICE vol 36(1) (2007 Reissue) para 101 et seq. As to powers of arrest see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 910 et seq.

## UPDATE

### 934 Powers of water bailiffs

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/935. Powers of private water keepers.

### 935. Powers of private water keepers.

A water keeper<sup>1</sup> appointed by the owner of a private fishery may do all acts which may be done by any other employee of the owner to protect the owner's property. He must not use more force than is reasonably necessary to eject trespassers<sup>2</sup>. He has the same powers of arrest without a warrant as any other citizen<sup>3</sup>.

1 Many fishery owners employ what are colloquially called 'water bailiffs'. However, water bailiffs proper are appointed by the Environment Agency and are vested with statutory powers (see para 934 ante); those vested with powers only by their employers are more correctly termed 'water keepers': see further Howarth *Freshwater Fishery Law* (1987) pp 160-161.

2 See *Hughes v Buckland* (1846) 15 M & W 346. As to the use of force in defence of property see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 22. As to trespass to property see further TORT vol 97 (2010) PARA 562 et seq.

3 See the Police and Criminal Evidence Act 1984 s 24A (as added); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 925. As to the common law power of a private person to arrest for breach of the peace see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 930.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/936. Powers exercisable without special authority.

### 936. Powers exercisable without special authority.

The production by a water bailiff appointed by the Environment Agency<sup>1</sup> or any person appointed by the Secretary of State or the Welsh Ministers<sup>2</sup> of evidence of his appointment is a sufficient warrant for him to exercise the powers conferred on him by the Salmon and Freshwater Fisheries Act 1975<sup>3</sup>.

Any water bailiff appointed by the Environment Agency<sup>4</sup> and any person appointed by the Secretary of State or the Welsh Ministers may examine any dam<sup>5</sup>, fishing weir<sup>6</sup>, fishing mill dam<sup>7</sup>, fixed engine<sup>8</sup> or obstruction, or any artificial watercourse, and for that purpose enter on any land<sup>9</sup>. He may also examine any instrument or bait which he has reasonable cause to suspect of having been or being used or likely to be used in taking fish in contravention of the Salmon and Freshwater Fisheries Act 1975, or any container which he has reasonable cause to suspect of having been or being used or likely to be used for holding any such instrument, bait or fish<sup>10</sup>. He may also stop and search any boat or other vessel used in fishing in the Environment Agency area or any vessel or vehicle which he has reasonable cause to suspect of containing unlawfully caught fish<sup>11</sup> or any such instrument, bait or container<sup>12</sup>. He may also seize any fish and any instrument, vessel, vehicle or other thing liable to be forfeited<sup>13</sup>.

If any person refuses to allow any water bailiff or a person appointed by the Secretary of State or the Welsh Ministers to make any entry, search or examination which he is authorised to make by these provisions<sup>14</sup>, or to seize anything which he is so authorised to seize, or resists or obstructs any water bailiff or person so appointed in any such entry, search, examination or seizure, he is guilty of an offence<sup>15</sup>.

A water bailiff or a person appointed by the Secretary of State or the Welsh Ministers, with any assistants, may without warrant seize and put as soon as may be into the custody of a police officer any person who, between the end of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning, illegally takes or kills salmon<sup>16</sup>, trout<sup>17</sup>, freshwater fish<sup>18</sup> or eels<sup>19</sup>, or has in his possession for their capture any prohibited<sup>20</sup> instrument<sup>21</sup>.

1 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante. As to the Agency's power to appoint water bailiffs see para 930 ante.

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 Salmon and Freshwater Fisheries Act 1975 s 36(2); and see the Salmon Act 1986 s 32(6)(b). 'Produce' means making the document available for inspection: *R v Longman* [1988] 1 WLR 619, 88 Cr App Rep 148, CA.

4 Salmon and Freshwater Fisheries Act 1975 s 31(1) (amended by the Environment Act 1995 s 105, Sch 15 para 2).

5 For the meaning of 'dam' see para 848 note 8 ante.

6 For the meaning of 'fishing weir' see para 848 note 7 ante.

7 For the meaning of 'fishing mill dam' see para 848 note 8 ante.

8 For the meaning of 'fixed engine' see para 848 note 10 ante.

9 Salmon and Freshwater Fisheries Act 1975 s 31(1)(a).

10 Ibid s 31(1)(b). The references to fish taken in contravention of the Salmon and Freshwater Fisheries Act 1975 include salmon in relation to which a relevant offence under the Salmon Act 1986 has been committed: see the Salmon Act 1986 s 32(6)(a).

11 Ie fish which had been caught in contravention of the Salmon and Freshwater Fisheries Act 1975: s 31(1)(c)(i).

12 Ibid s 31(1)(c)(i), (ii) (s 31(1)(c) amended by the Environment Act 1995 Sch 15 para 2).

13 Salmon and Freshwater Fisheries Act 1975 s 31(1)(d). This provision and those of s 36(1), (2), Sch 4 para 8 (see paras 924, 934 ante) also apply for the enforcement of the Sea Fish (Conservation) Act 1967 and orders made under ss 4, 5, 6, in so far as they impose any prohibition or restriction on fishing for salmon or migratory trout within any waters which are included in the area which is the area in relation to which the Environment Agency carries out functions relating to fisheries under the Salmon and Freshwater Fisheries Act 1975 or on landing salmon or migratory trout: see the Sea Fish (Conservation) Act 1967 s 18(1)(a) (substituted by the Salmon and Freshwater Fisheries Act 1975 s 42(2)). See also paras 989, 992 post.

14 le the Salmon and Freshwater Fisheries Act 1975 s 31 (as amended).

15 Ibid s 31(2). As to the penalties, and as to forfeitures, see para 924 ante. It seems that refusal is justified until the bailiff produces his instrument of authority: *Barnacott v Passmore* (1887) 19 QBD 75. A mere offer to produce the instrument is sufficient, even if it is too dark to see: *Cowler v Jones* (1890) 54 JP 660, DC. Production of his instrument of appointment is in any event not a condition precedent to the water bailiff or appointed person acting as constable: *Edwards v Morgan* [1967] Crim LR 40, DC.

16 For the meaning of 'salmon' see para 848 note 1 ante.

17 For the meaning of 'trout' see para 848 note 2 ante.

18 For the meaning of 'freshwater fish' see para 848 note 3 ante.

19 As to the meaning of 'eels' see para 848 note 27 ante.

20 le any instrument prohibited by the Salmon and Freshwater Fisheries Act 1975.

21 Ibid s 34.

## UPDATE

### **936-937 Powers exercisable without special authority, Entry on land authorised by special authority or warrant**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **936 Powers exercisable without special authority**

TEXT AND NOTES 4-13--Salmon and Freshwater Fisheries Act 1975 s 31(1) further amended and repealed in part: Marine and Coastal Access Act 2009 s 220(2), Sch 22 Pt 5.

NOTE 10--Salmon Act 1986 s 32(6)(a) repealed: Marine and Coastal Access Act 2009 Sch 16 para 19, Sch 22 Pt 5.

TEXT AND NOTE 21--Salmon and Freshwater Fisheries Act 1975 s 34 amended: Marine and Coastal Access Act 2009 s 220(6), Sch 16 para 13, Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/937. Entry on land authorised by special authority or warrant.

### **937. Entry on land authorised by special authority or warrant.**

Where from a statement on oath of a water bailiff<sup>1</sup> or any other officer of the Environment Agency<sup>2</sup>, or any person appointed by the Secretary of State or the Welsh Ministers<sup>3</sup>, it appears to any justice of the peace that the person making the statement has good reason to suspect that any offence against the Salmon and Freshwater Fisheries Act 1975 is being or is likely to be committed on any land situate on or near any waters, the justice may by order under his hand authorise him, during a period not exceeding 24 hours to be specified in the order, to enter upon and remain on the land during any hours of the day or night for the purpose of detecting the persons committing the offence<sup>4</sup>.

Upon an information on oath that there is probable cause to suspect any offence under the Act to have been committed on any premises, or any salmon<sup>5</sup>, trout<sup>6</sup>, freshwater fish<sup>7</sup> or eels<sup>8</sup> to have been illegally taken, or any illegal nets or other instruments to be on any premises, any justice of the peace, by warrant under his hand and seal, may authorise any water bailiff or other officer of the Environment Agency, or any person appointed by the Secretary of State or the Welsh Ministers, or any constable, to enter the premises for the purposes of detecting the offence or the fish, nets or other instruments at such times of the day or night as are mentioned in the warrant, and to seize all illegal nets and other instruments and all salmon, trout, freshwater fish or eels suspected to have been illegally taken that may be found on the premises<sup>9</sup>.

Upon information upon oath that there is reasonable cause to suspect an offence under the Diseases of Fish Act 1937 to have been committed, any justice of the peace, by warrant under his hand, may authorise any person named in the warrant to enter on any land<sup>10</sup> mentioned in the warrant at such times as are so mentioned and to seize any fish, fish eggs or foodstuff for fish<sup>11</sup> or article which that person suspects to have been imported or brought into Great Britain<sup>12</sup>, removed or otherwise dealt with, or to be about to be removed or otherwise dealt with, in contravention of the Act or of any licence granted, order made, or notice served under it<sup>13</sup>.

For the purpose of preventing any offence against the Salmon and Freshwater Fisheries Act 1975 any water bailiff or other officer of the Environment Agency under a special order in writing from the Agency, and any person appointed by the Secretary of State or the Welsh Ministers under written order, may at all reasonable times enter, remain upon and traverse any land adjoining or near to any waters other than a dwelling house or the curtilage<sup>14</sup> of a dwelling house, or decoys or land used exclusively for the preservation of wild fowl<sup>15</sup>.

1 As to water bailiffs see para 934 et seq ante.

2 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

3 As to the Secretary of State and the Welsh Ministers see para 846 ante.

4 Salmon and Freshwater Fisheries Act 1975 s 33(1) (amended by the Environment Act 1995 s 105, Sch 15 para 2).

5 For the meaning of 'salmon' see para 848 note 1 ante.

6 For the meaning of 'trout' see para 848 note 2 ante.

7 For the meaning of 'freshwater fish' see para 848 note 3 ante.

8 As to the meaning of 'eels' see para 848 note 27 ante.

9 Salmon and Freshwater Fisheries Act 1975 s 33(2). Section 33(2) also applies to the provisions in the Salmon Act 1986 s 32 (handling salmon in suspicious circumstances: see para 878 ante): see the Salmon Act 1986 s 32(6)(b). The warrant may not continue in force for more than one week: Salmon and Freshwater Fisheries Act 1975 s 33(3).

10 As to the meaning of 'land' see para 901 note 12 ante. Note that the Diseases of Fish Act 1937 s 6(1) has effect for the purposes of authorising the boarding of and entry into a cage situated in marine waters and



used for the purpose of the business of fish farming (see para 895 note 6 ante) as it has for the purpose of authorising entry on land: s 6(1).

11 For the meaning of 'fish' see para 883 note 1 ante. For the meaning of 'foodstuff for fish' see para 895 note 4 ante.

12 For the meaning of 'Great Britain' see para 843 note 1 ante.

13 Diseases of Fish Act 1937 s 6(1). The warrant may not continue in force for more than one week from the date of its grant: s 6(1).

14 As to the meaning of 'curtilage' see *Pilbrow v St Leonard, Shoreditch, Vestry* [1895] 1 QB 33 (affd [1895] 1 QB 433, CA); *Marson v London, Chatham and Dover Rly Co* (1868) LR 6 Eq 101.

15 Salmon and Freshwater Fisheries Act 1975 s 32(1) (amended by the Water Act 1989 s 141, Sch 17 para 7(1), (8); and the Environment Act 1995 s 105, Sch 15 para 2). An order under the Salmon and Freshwater Fisheries Act 1975 s 32(1) may not remain in force for more than 12 months: s 32(2).

## UPDATE

### **936-937 Powers exercisable without special authority, Entry on land authorised by special authority or warrant**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **937 Entry on land authorised by special authority or warrant**

TEXT AND NOTE 9--Salmon and Freshwater Fisheries Act 1975 s 33(2), (3) amended: Marine and Coastal Access Act 2009 s 220(4), (5), Sch 16 para 12.

TEXT AND NOTES 10-13--Diseases of Fish Act 1937 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 5 regs 32-40.

TEXT AND NOTE 15--Salmon and Freshwater Fisheries Act 1975 s 32(1) further amended: Marine and Coastal Access Act 2009 s 220(3), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/938. Entry and inspection.

### **938. Entry and inspection.**

Any person designated in writing by the Secretary of State, the Welsh Ministers<sup>1</sup> or the Environment Agency<sup>2</sup> may enter any premises or vessel for the purpose of ascertaining whether certain enactments<sup>3</sup> apply or whether certain subordinate legislation or any byelaws made by the Environment Agency is being or has been contravened<sup>4</sup>. Such a designated person may also carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as are considered appropriate<sup>5</sup> by the Secretary of State, the Welsh Ministers or the Environment Agency and as that person has been authorised to carry out or take away<sup>6</sup>. This includes power<sup>7</sup> to carry out experimental

borings or other works on those premises and to install and keep monitoring and other apparatus there<sup>8</sup>.

- 1 As to the Secretary of State and the Welsh Ministers see para 846 ante.
- 2 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.
- 3 This applies to any enactment contained in the Water Resources Act 1991 and to any other enactment under or for the purposes of which the Environment Agency carries out functions: s 169(3) (amended by the Environment Act 1995 s 120, Sch 22 paras 128, 165).
- 4 Water Resources Act 1991 s 169(1)(a) (amended by the Environment Act 1995 s 120, Sch 22 para 128).
- 5 It considers appropriate for the purpose mentioned in the Water Resources Act 1991 s 169(1)(a) (as amended) (see the text and note 4 supra): s 169(1)(b).
- 6 Ibid s 169(1)(b).
- 7 It power in order to obtain information for the purpose mentioned in ibid s 169(1)(a) (as amended): see the text and note 4 supra.
- 8 Ibid s 169(2) (substituted by the Water Act 2003 s 71).

## UPDATE

### 938-940 Entry and inspection ... Fisheries contributions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/939. Fisheries orders.

### 939. Fisheries orders.

The Secretary of State and the Welsh Ministers<sup>1</sup> have power, on an application made by the Environment Agency<sup>2</sup>, by order made by statutory instrument<sup>3</sup> to make provision in relation to an area defined by the order for the modification, in relation to the fisheries in that area of any provision of the Salmon and Freshwater Fisheries Act 1975 relating to the regulation of fisheries, certain provisions of the Water Resources Act 1991<sup>4</sup>, or any provision of a local Act relating to any fishery in that area<sup>5</sup>. Such an order may contain such supplemental, consequential and transitional provision, including provision for the payment of compensation to persons injuriously affected by the order, as may appear to be necessary or expedient in connection with the other provisions of the order<sup>6</sup>. However, the order will not apply to any waters in respect of which a fish rearing licence has been granted<sup>7</sup>.

Before making an order the Secretary of State or the Welsh Ministers must send to the Agency a copy of the draft order, and notify the Agency of the time within which, and the manner in which, objections to the draft order may be made<sup>8</sup>. No order may be made unless the Agency has caused notice to be published in the London Gazette<sup>9</sup>. Before making the order the Secretary of State or the Welsh Ministers must consider any objection which may be duly made

to the draft order, and may cause a public local inquiry to be held with respect to any such objections<sup>10</sup>.

Where the fishery, land or foreshore in question belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall or belongs to, or is under the management of, any government department, the consent of the appropriate authority must first be obtained<sup>11</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

3 A statutory instrument made by the Secretary of State containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament; and, where a statutory instrument is laid before Parliament, a copy of the report of any local inquiry held with respect to objections considered in connection with the making of the order contained in that instrument must be so laid at the same time: Water Resources Act 1991 s 115(6). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162, Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 In the Water Resources Act 1991 s 142 (as amended) (see para 940 post) or s 156 (as amended) (see para 931 ante) or Sch 25 para 6 or 7 (see paras 932-933 ante).

5 Ibid s 115(1) (amended by the Environment Act 1995 ss 105, 120, Sch 15 para 25, Sch 22 para 128).

6 Water Resources Act 1991 s 115(2)(a).

7 Ibid s 115(2)(b). As to fish rearing licences see the Salmon and Freshwater Fisheries Act 1975 s 29; and para 944 post.

8 Water Resources Act 1991 s 115(3) (amended by the Environment Act 1995 Sch 22 para 128).

9 See the Water Resources Act 1991 s 115(4) (amended by the Environment Act 1995 Sch 22 para 128).

10 Water Resources Act 1991 s 115(5).

11 See ibid s 115(7) (amended by the Environment Act 1995 s 116, Sch 21 para 2(2)). The 'appropriate authority': (1) in the case of any foreshore under the management of the Crown Estate Commissioners or of any fishery or land belonging to Her Majesty in right of the Crown, means those Commissioners; (2) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Lancaster, means the Chancellor of the Duchy; (3) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Cornwall, means the Duke of Cornwall or the persons for the time being empowered to dispose for any purpose of the land of the Duchy; (4) in the case of any foreshore, fishery or land which belongs to or is under the management of a government department, means that government department: Water Resources Act 1991 s 115(8), (9).

## UPDATE

### 938-940 Entry and inspection ... Fisheries contributions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 939 Fisheries orders

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 5--Water Resources Act 1991 s 115(1) further amended: Marine and Coastal Access Act 2009 Sch 16 para 21.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(2) SALMON AND FRESHWATER FISHERIES/ (ix) Administration and Enforcement/940. Fisheries contributions.

#### **940. Fisheries contributions.**

The Secretary of State and the Welsh Ministers<sup>1</sup> have power, on an application made by the Environment Agency<sup>2</sup>, by order made by statutory instrument<sup>3</sup> to make provision in relation to an area defined by the order:

- (1) for the imposition on the owners and occupiers<sup>4</sup> of fisheries in that area of requirements to pay contributions to the Environment Agency, of such amounts as may be determined under the order, in respect of the expenses of the carrying out in relation to that area of the Agency's functions with respect to fisheries<sup>5</sup>;
- (2) for such contributions to be paid or recovered in such manner, and to be refundable, in such circumstances as may be specified in or determined under the order<sup>6</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

3 The provisions of Water Resources Act 1991 s 115(2)-(6) have effect in relation to this power as they have effect in relation to the power conferred by s 115(1) (as amended) (see para 939 ante): s 142(2) (amended by the Environment Act 1995 ss 116, 120, Sch 21 para 2(3), Sch 22 para 128).

4 As to the meaning of 'owner' see para 861 note 4 ante; and as to the meaning of 'occupier' see para 861 note 5 ante (definitions applied by the Water Resources Act 1991 s 142(3)).

5 Ibid s 142(1)(a) (amended by the Environment Act 1995 Sch 21 para 2(3), Sch 22 para 128).

6 Water Resources Act 1991 s 142(1)(b).

#### **UPDATE**

#### **938-940 Entry and inspection ... Fisheries contributions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/941. Definitions of the terms 'fish farm' and 'fish farming'.

### **(3) FISH FARMING**

#### **941. Definitions of the terms 'fish farm' and 'fish farming'.**

For the purposes of development of a new or existing fish farm a distinction is made between those farms producing fish for human consumption and those not<sup>1</sup>. For the purposes of the Diseases of Fish Act 1937 and stocking of fish in fish farms, the expression 'fish farm' means any pond, stew, fish hatchery or other place used for keeping with a view to their sale or their transfer to other waters (including any other fish farm) live fish, live eggs of fish or foodstuff of fish, and includes any buildings used in connection therewith and the banks and margins of any water therein<sup>2</sup>. In relation to the registration of fish farms, the Diseases of Fish Act 1983 states that fish farming is the keeping of live fish with a view to their sale or transfer to other waters<sup>3</sup>. This is broadly similar to the definition given in secondary legislation relating to environmental impact assessments<sup>4</sup>. For the purposes of disease control and the movement of fish, 'farm' is defined in the Fish Health Regulations 1997 as any establishment or, in general, any geographically defined installation in which aquaculture animals are reared or kept with a view to their being placed on the market<sup>5</sup>. In the case of the Fisheries Act 1981, 'fish farming' means the breeding, rearing or cultivating of fish (including shellfish) for the purpose of producing fish for human consumption<sup>6</sup>. The definition of 'fish farming' for the purpose of non-domestic rating is limited to the breeding or rearing of fish, or the cultivation of shellfish, for human consumption or for their transfer to other waters, but specifically excludes activities where the fish or shellfish are purely ornamental or are bred, reared or cultivated for exhibition<sup>7</sup>.

1 See para 942 post.

2 See the Diseases of Fish Act 1937 s 10; and para 895 note 4 ante.

3 See the Diseases of Fish Act 1983 s 7(8); and para 945 post.

4 See the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, SI 1999/367, reg 2(1); and para 943 note 2 post.

5 See the Fish Health Regulations 1997, SI 1997/1881, reg 2; and para 911 note 3 ante.

6 See the Fisheries Act 1981 s 31(2); and para 953 note 2 post.

7 See the Local Government Finance Act 1988 Sch 5 para 9; and para 947 post.

#### **UPDATE**

#### **941 Definitions of the terms 'fish farm' and 'fish farming'**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 3--Diseases of Fish Act 1983 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/942. Development of new and existing fish farms.

#### **942. Development of new and existing fish farms.**

The construction of fish farms and ancillary buildings including excavation of ponds is subject to planning controls<sup>1</sup>. However, statutory exemptions to these controls in respect of the carrying out on agricultural land of certain activities are contained in the General Permitted Development Order 1995<sup>2</sup>. Fish farming development was originally given special status, but is now treated in the same way as other agricultural activity. The exemption will only benefit fish farms that use the land for agricultural purposes<sup>3</sup>.

1 As to general controls on the development of land see TOWN AND COUNTRY PLANNING.

2 See the Town and Country Planning General Permitted Development Order 1995, SI 1995/418, art 3, Sch 2 Pt 6 (as amended); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) paras 302-309. A distinction is made between development on units over 5 hectares (Class A development) and units of between 0.4 and 5 hectares (Class B development): see further TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) paras 302-309.

3 In order to qualify, the fish farming activity must be producing fish for food (thus excluding from exemption those farms producing fish for restocking). Analogous cases make it clear that there is a distinction between animals kept for or connected with food production and those kept for other purposes: see eg *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 13 P & CR 417 (use of land for racehorses was not agricultural use); cf *Fox v First Secretary of State* [2003] EWHC 887 (Admin), [2003] All ER (D) 453 (Mar) (if land was used for grazing it was an agricultural use even if the land was grazed by racehorses).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/943. Environmental impact assessments in respect of fish farming in marine waters.

### **943. Environmental impact assessments in respect of fish farming in marine waters.**

Where an application is made to the Crown Estate Commissioners<sup>1</sup> for a consent or licence as regards fish farming<sup>2</sup> in marine waters<sup>3</sup> where the proposed development will be likely to have significant effects on the environment<sup>4</sup>, they must not grant that consent or licence unless they have taken into consideration the environmental information<sup>5</sup> in respect of the proposed development and state in their decision that they have done so<sup>6</sup>. A person who wishes to apply for consent or a licence as regards fish farming in marine waters may ask the Commissioners to state in writing their opinion (a 'screening opinion') as to whether an environmental assessment is required<sup>7</sup>. The Commissioners must take into account the relevant selection criteria<sup>8</sup> and make appropriate consultation<sup>9</sup>, and must respond to a request within six weeks<sup>10</sup>. They must then make available for inspection screening opinions, accompanying statements or reasons, and the request<sup>11</sup>.

A person intending to apply for such a consent may also ask the Commissioners to state what information should be included in an environment statement (a 'scoping opinion')<sup>12</sup>. In giving a scoping opinion the Commissioners must make appropriate consultation<sup>13</sup> and they must also take into account the specific characteristics of the proposed development and the environmental features likely to be affected by the development<sup>14</sup>.

Where any authority, body or person is notified that a person has applied for a consent it may whether by request or otherwise enter into consultation with a view to deciding whether it has information in its possession relevant to the preparation of an environmental statement, and if so it must make it available to the applicant<sup>15</sup>.

Applicants must publicise information about the intended application<sup>16</sup>. Unless the Commissioners consider such consultation unnecessary, they must consult specified bodies and authorities about the environmental statement and must give such authorities no less than

28 days to respond to such consultation<sup>17</sup>. The Commissioners may require an applicant to provide further information in relation to an environmental statement and for verification of such information<sup>18</sup>.

Where the Commissioners decide that a development is likely to have significant effects on the environment<sup>19</sup>, they must notify: (1) the applicant, and all authorities and bodies they consulted; and (2) the public, of their decision<sup>20</sup>.

1 The Crown Estate Commissioners, on behalf of the Crown, have the power to grant leases for fish farming in tidal waters in England and Wales. As to ownership of tidal waters see paras 813-815 ante. As to Crown ownership of land generally see CROWN PROPERTY. Note that in respect of the Shetland Islands and the Orkney Islands the relevant authorities are the Shetland Islands Council or the Orkney Islands Council respectively; Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, SI 1999/367, regs 1, 2(1), (2), 12, 13.

2 For these purposes, 'fish farming' means keeping live fish excluding shellfish (whether or not for profit) with a view to their sale or to their transfer to other marine waters: *ibid* reg 2(1).

3 'Marine waters' means waters within the seaward limits of the territorial sea adjacent to Great Britain other than inland water and waters within the jurisdiction of a local planning authority: *ibid* reg 2(1). 'Inland waters' means waters within Great Britain which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows: reg 2(1).

4 This is to be determined by reference to the nature, size or location of the development: see *ibid* reg 3(1). Where it comes to the attention of the Secretary of State that the proposed development is likely to have significant effects on the environment in another member state, or another member state likely to be so affected makes a request, the Secretary of State must send the member state a description of the development together with information on the nature of the decision which may be taken: see reg 15.

5 'Environmental information' means: (1) any environmental statement, including any further information provided by the applicant, required to be provided by the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, SI 1999/367; (2) any representations made by an authority, body or person required by the regulations to be invited to make representations or be consulted; and (3) any representations duly made by any other person about the likely environmental effects of the proposed development: reg 2(1). 'Environmental statement' means a statement: (a) that includes such of the information referred to in Sch 2 Pt I as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but (b) which includes at least the information referred to in Sch 2 Pt II: reg 2(1).

6 *Ibid* reg 3(1).

7 *Ibid* reg 4(1). Certain documents must accompany the request: see reg 4(2). Further information may be requested if necessary: see reg 4(3).

8 *Ibid* reg 4(6), Sch 1.

9 See *ibid* reg 4(4), Sch 3.

10 *Ibid* reg 4(5). Where the Crown Estate Commissioners express an opinion that an environmental assessment is necessary they must give reasons and notify relevant authorities, bodies and persons: see reg 4(7), (8). As to applications made without an environmental statement see reg 5.

11 See *ibid* reg 4(9).

12 *Ibid* reg 6(1). A request for a scoping opinion must be accompanied by relevant documentation: see reg 6(2). Further information may be requested if necessary: see reg 6(3). The opinion must be given within six weeks or any longer period agreed in writing with the applicant: see reg 6(5), (6).

13 *Ibid* reg 6(4).

14 *Ibid* reg 6(7).

15 See *ibid* reg 7.

16 See *ibid* reg 8. A reasonable charge may be made for the cost of printing, copying and distributing copies of the environmental statement: see reg 14.

17 See *ibid* reg 9, Sch 3. A reasonable charge may be made for the cost of making available such information: see reg 14.

18 See *ibid* reg 10.

19 Ie that the development is one which falls within *ibid* reg 3: see the text and notes 1-6 *supra*.

20 *Ibid* reg 11. They must publish a notice of the decision in a local newspaper, and must make a statement containing the decision and the reasons for it available for inspection: see reg 11.

## UPDATE

### **943 Environmental impact assessments in respect of fish farming in marine waters**

TEXT AND NOTES--See also EC Council Regulation 708/2007 (OJ L168, 28.6.2007, p 1) concerning use of alien and locally absent species in aquaculture (to be applied by member states no later than 29 January 1999). The regulation introduces a framework governing aquaculture practices in relation to alien and locally absent species in order to assess and minimise the potential impact of these on aquatic habitats. Aquaculture operators wishing to introduce alien species or translocate locally absent species will first have to apply to the competent authority for a permit. For a definition of 'aquaculture' see EC Council Regulation 1198/2006 (OJ L223, 15.8.2006, p 1) art 3.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/944. Fish rearing licences.

### **944. Fish rearing licences.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may grant a licence to carry on the business of artificially propagating or rearing salmon<sup>2</sup> or trout<sup>3</sup> in any waters<sup>4</sup>. Any such licence may be granted subject to such conditions, if any, as the Secretary of State or the Welsh Ministers think fit, and may be revoked if he is or they are of opinion that any condition has not been observed<sup>5</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 *ante*.

2 For the meaning of 'salmon' see para 848 note 1 *ante*.

3 For the meaning of 'trout' see para 848 note 2 *ante*.

4 Salmon and Freshwater Fisheries Act 1975 s 29(1). At the date at which this volume states the law no such licensing system had been implemented.

5 *Ibid* s 29(2).

## UPDATE

### **944-946 Fish rearing licences ... Offences in relation to the registration of fish farms**



Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/945. Registration of fish farms.

#### **945. Registration of fish farms.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may make an order<sup>2</sup> for the purpose of obtaining information with a view to preventing the spread of disease among fish<sup>3</sup>. Such an order may require any person who occupies an inland fish farm<sup>4</sup> for the purposes of a business of fish farming<sup>5</sup> carried on by him (whether or not for profit):

- (1) to register the business in a register kept for the purpose by the Secretary of State or the Welsh Ministers<sup>6</sup>;
- (2) to furnish in writing to the Secretary of State or the Welsh Ministers such information as may be specified in the order in relation to the farm and to fish, eggs of fish and foodstuff for fish<sup>7</sup>;
- (3) to compile specified records<sup>8</sup>; and
- (4) to retain any such records for such period (not exceeding three years) as may be so specified<sup>9</sup>.

An order may require any person who owns or possesses any cage, pontoon or other structure which is anchored or moored in marine waters<sup>10</sup> and is used by him for the purposes of a business of fish farming carried on by him (whether or not for profit) similarly to register his business<sup>11</sup>, furnish specified information relating to any such cage etc<sup>12</sup>, and compile<sup>13</sup> and retain records<sup>14</sup>.

An order may require any person who carries on a business of shellfish farming<sup>15</sup> (whether or not for profit) similarly to register his business<sup>16</sup> and to furnish specified information in relation to any activity carried on (whether in marine or inland waters or on land) for the purpose of cultivating or propagating shellfish in the course of the business, and in relation to shellfish deposited in or on or taken from such waters or land in the course of the business<sup>17</sup>. It may also require him to compile<sup>18</sup> and retain records as described above<sup>19</sup>.

Any person registering a business in this way<sup>20</sup> may be required to pay in respect of each registration such fee as may be specified in the order<sup>21</sup>. Any person authorised by the Secretary of State or the Welsh Ministers may (on producing on demand evidence of his authority) require the production of, and inspect and take copies of, any records which a person is so required to retain<sup>22</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 The power of the Secretary of State to make an order under the Diseases of Fish Act 1983 s 7 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 7(9). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162, Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the order that has been made under the Diseases of Fish Act 1983 s 7 see the Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391 (amended by SI 1994/1447; SI 1997/1881).

3 Diseases of Fish Act 1983 s 7(1).

4 'Inland fish farm' means any place where inland waters are used for the keeping of live fish with a view to their sale or to their transfer to other waters (whether inland or not): *ibid* s 7(8); and see para 941 ante. 'Inland waters' means waters within Great Britain which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows: s 7(8).

5 'Fish farming' is the keeping of live fish with a view to their sale or transfer to other waters: *ibid* s 7(8).

6 *Ibid* s 7(2)(a); Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391, arts 1, 3, Sch 1.

7 Diseases of Fish Act 1983 s 7(2)(b); Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391, art 4. In the Diseases of Fish Act 1983 s 7(2), (3) and in the Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391 (as amended), 'fish' does not include shellfish (see note 15 *infra*): Diseases of Fish Act 1983 s 7(2); Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391, art 2, Sch 2.

8 Diseases of Fish Act 1983 s 7(2)(c); Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391, art 5, Sch 3 (amended by SI 1994/1447; SI 1997/1881).

9 Diseases of Fish Act 1983 s 7(2)(d); Registration of Fish Farming and Shellfish Farming Businesses Order 1985, SI 1985/1391, art 5.

10 'Marine waters' means waters (other than inland waters) within the seaward limits of the territorial sea adjacent to Great Britain: under the Diseases of Fish Act 1983 s 7(8).

11 *Ibid* s 7(3)(a); and see head (1) in the text.

12 *Ibid* s 7(3)(b); and see head (2) in the text.

13 *Ibid* s 7(3)(c); and see head (3) in the text.

14 *Ibid* s 7(3)(d); and see head (4) in the text.

15 'Shellfish farming' means the cultivation or propagation of shellfish (whether in marine or inland waters or on land) with a view to their sale or to their transfer to other waters or land; and 'shellfish' includes crustaceans and molluscs of any kind, and includes any brook, ware, half-ware, spat or spawn of shellfish: *ibid* s 7(8).

16 *Ibid* s 7(4)(a); and see head (1) in the text.

17 *Ibid* s 7(4)(b); and see head (2) in the text.

18 *Ibid* s 7(4)(c); and see head (3) in the text.

19 *Ibid* s 7(4)(d); and see head (4) in the text.

20 *Ie* under *ibid* s 7(2)(a), (3)(a), or (4)(a): see the text and notes 6, 11, 16 *supra*.

21 *Ibid* s 7(5). The fee is determined by the Secretary of State or the Welsh Ministers with the Treasury's approval but must not exceed the cost of effecting the registration: s 7(6). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

22 *Ibid* s 7(7).

## UPDATE

### 944-946 Fish rearing licences ... Offences in relation to the registration of fish farms

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## 945 Registration of fish farms

TEXT AND NOTES--Diseases of Fish Act 1983 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 2 regs 4-14 as to authorisation and registration requirements.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/946. Offences in relation to the registration of fish farms.

### 946. Offences in relation to the registration of fish farms.

Any person who:

- (1) fails without reasonable excuse to comply with a requirement<sup>1</sup> of a fish farm registration order<sup>2</sup>; or
- (2) in purported compliance with a requirement of such an order knowingly furnishes any information or compiles a record which is false in a material particular<sup>3</sup>; or
- (3) knowingly alters a record compiled in compliance with a requirement of such an order so that the record becomes false in a material particular<sup>4</sup>; or
- (4) fails without reasonable excuse to comply with a requirement to produce records for inspection on demand<sup>5</sup>; or
- (5) intentionally obstructs a person in the exercise of his powers to demand records for inspection<sup>6</sup>,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale<sup>7</sup>.

Where such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly<sup>8</sup>.

Information (including information in records) obtained by any person in pursuance of the power to demand the production of records must not be disclosed except:

- (a) with the written consent of the person by whom the information was provided<sup>9</sup>; or
- (b) in the form of a summary of similar information obtained from a number of persons, where the summary is so framed as not to enable particulars relating to any one person or business to be ascertained from it<sup>10</sup>; or
- (c) for the purpose of any criminal proceedings or for the purpose of a report of any such proceedings<sup>11</sup>; or
- (d) for the purposes of enabling the Environment Agency to carry out any of its functions under the Diseases of Fish Act 1937<sup>12</sup>.

Any person who discloses any information in contravention of these provisions is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale<sup>13</sup>.

1       le a requirement other than one mentioned in the Diseases of Fish Act 1983 s 7(5): see para 945 ante.

2       Ibid s 8(1)(a). The order referred to in the text is any order made under s 7: see para 945 ante.

3       Ibid s 8(1)(b).

4       Ibid s 8(1)(c).

5       Ibid s 8(1)(d). As to the power to require the production of records see s 7(7); and para 945 ante.

6       Ibid s 8(1)(e).

7       Ibid s 8(1) (amended by the Statute Law (Repeals) Act 1993). As to the standard scale see para 841 note 4 ante. For the purposes of and incidental to the jurisdiction of any magistrates' court any offence under the Diseases of Fish Act 1983 s 8 committed in, or in relation to anything in, the territorial sea adjacent to Great Britain is to be taken to have been committed in any place in which the offender may for the time being be found: s 8(3).

8       Ibid s 8(2).

9       Ibid s 9(1)(a).

10       Ibid s 9(1)(b).

11       Ibid s 9(1)(c).

12       Ibid s 9(1)(d) (amended by the Salmon Act 1986 s 38; the Water Act 1989 s 141, Sch 17 para 8; and the Environment Act 1995 s 105, Sch 15 para 23). As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

13       Diseases of Fish Act 1983 s 9(2) (amended by the Statute Law(Repeals) Act 1993).

## UPDATE

### **944-946 Fish rearing licences ... Offences in relation to the registration of fish farms**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **946 Offences in relation to the registration of fish farms**

TEXT AND NOTES--Diseases of Fish Act 1983 repealed: Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463. See Pt 5 regs 32-40 in relation to enforcement, appeals and penalties.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/947. Rating of fish farms.

### **947. Rating of fish farms.**

Where land is or buildings<sup>1</sup> are used solely for or in connection with fish farming<sup>2</sup> the land or buildings will be exempt from non-domestic rating<sup>3</sup>. This exemption is not affected by any other temporary use to which such land is put<sup>4</sup>.

1 'Building' includes a separate part of a building but does not, for this purpose, include dwellings: see the Local Government Finance Act 1988 s 51, Sch 5 para 9(1), (3).

2 'Fish farming', for this purpose, means the breeding or rearing of fish, or the cultivation of shellfish, for human consumption or for their transfer to other waters, but an activity does not constitute fish farming if the fish or shellfish are purely ornamental or are bred, reared or cultivated for exhibition: *ibid* Sch 5 para 9(4), (4A) (added by the Local Government and Housing Act 1989 s 139, Sch 5 para 37(3)).

3 See the Local Government Finance Act 1988 Sch 5 para 9(1); and *RATING AND COUNCIL TAX* vol 39(1B) (Reissue) para 49.

4 See *ibid* Sch 5 para 9(2); and *RATING AND COUNCIL TAX* vol 39(1B) (Reissue) para 49.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/948. Controls of water abstraction for, and discharges from, fish farms.

#### **948. Controls of water abstraction for, and discharges from, fish farms.**

The Water Resources Act 1963, the Water Act 1989 and the Water Resources Act 1991 progressively increased the extent of the controls over abstraction of water for fish farming purposes<sup>1</sup>. Any abstraction of water from any source of supply is unlawful unless it is abstracted in pursuance of a licence<sup>2</sup>. However, the restriction on abstraction will not apply in the case of abstraction for the use of a holding consisting of land contiguous to the water supply and used for agricultural purposes<sup>3</sup>. Where persons abstracted water for the purposes of fish farming prior to the Water Resources Act 1963 and the Water Act 1989, there was a statutory procedure so that abstraction at levels in excess of new statutory limits could continue where long use could be established<sup>4</sup>. Fish farms are subject to statutory controls over the polluting effect of discharges from the farms into watercourses<sup>5</sup>. However, a person will not be guilty of an offence if the discharge was in accordance with a consent given by the Environment Agency<sup>6</sup> for that discharge<sup>7</sup>.

1 See the Water Resources Act 1991 Pt II Ch II (ss 24-72) (as amended); and *WATER AND WATERWAYS* vol 100 (2009) PARA 214 et seq.

2 See *ibid* s 24 (as amended); and *WATER AND WATERWAYS* vol 100 (2009) PARA 214.

3 See *ibid* s 27 (as substituted); and *WATER AND WATERWAYS* vol 100 (2009) PARA 221.

4 See *ibid* Sch 7; and *WATER AND WATERWAYS* vol 100 (2009) PARA 238.

5 As to the control of polluting discharges see *ibid* Pt III Ch II (ss 85-91) (as amended); and *ENVIRONMENTAL QUALITY AND PUBLIC HEALTH* vol 45 (2010) PARA 291 et seq.

6 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

7 See the Water Resources Act 1991 s 88(1)(a); and *ENVIRONMENTAL QUALITY AND PUBLIC HEALTH* vol 45 (2010) PARAS 294, 300.

#### **UPDATE**

## **948 Controls of water abstraction for, and discharges from, fish farms**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/949. Use of pesticides on fish farms.

### **949. Use of pesticides on fish farms.**

The use of pesticides to control pests affecting fish farms is subject to regulation under the Control of Pesticides Regulations 1986<sup>1</sup>.

<sup>1</sup> See the Control of Pesticides Regulations 1986, SI 1986/1510 (as amended); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1037.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/950. Use of medicines on fish farms.

### **950. Use of medicines on fish farms.**

The use of veterinary drugs for the treatment of fish or of parasites of those fish is regulated under the Medicines Act 1968, and such drugs cannot be used unless a product licence has been issued<sup>1</sup>. There are statutory restrictions on the vaccination of fish for certain diseases<sup>2</sup>.

<sup>1</sup> See the Medicines Act 1968 Pt II (ss 6-50) (as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) para 42 et seq.

<sup>2</sup> See para 908 ante.

## **UPDATE**

### **950-956 Use of medicines on fish farms ... The principal statutes**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **950 Use of medicines on fish farms**

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/951. Pests on fish farms.

### **951. Pests on fish farms.**

A person is guilty of an offence if he intentionally kills, injures or takes any wild bird<sup>1</sup>. It is also an offence intention to kill, injure or take certain species of wild animal<sup>2</sup>. However, an authorised person<sup>3</sup> is not guilty of such an offence if he shows his action was necessary<sup>4</sup> for the purpose of preventing serious damage to livestock, fisheries or inland waters<sup>5</sup>. This defence cannot be relied on as respects any action taken at any time if it had become apparent, before that time, that that action would prove necessary and either: (1) a licence<sup>6</sup> has not been applied for by him as soon as reasonably practicable after that fact had become apparent; or (2) an application by him for such a licence had been determined<sup>7</sup>. Seals have a separate protection regime<sup>8</sup>.

1 See the Wildlife and Countryside Act 1981 s 1 (as amended); and ANIMALS vol 2 (2008) PARA 994. Certain species are excepted or are so excepted at certain times of the year (see s 2, Sch 2 Pt I (as amended)); ANIMALS vol 2 (2008) PARAS 995-1003), but these do not include species known to be pests for fish farmers such as cormorants or herons.

2 See *ibid* s 9, Sch 5 (both as amended); and ANIMALS vol 2 (2008) PARA 1015.

3 Authorised persons include a person who is an owner or occupier or any person authorised by the owner or occupier of the land on which the action authorised is taken, or a person authorised by certain bodies: see *ibid* s 27(1).

4 In relation to wild birds, an authorised person is not to be regarded as showing that any action of his was necessary unless he shows that as regards that purpose, there was no other satisfactory solution: see *ibid* s 4(4) (added by the Wildlife and Countryside Act 1981 (Amendment) Regulations 1995, SI 1995/2825, reg 2(2); and amended by the Nature Conservation (Scotland) Act 2004 s 50, Sch 6 paras 1, 5).

5 See the Wildlife and Countryside Act 1981 ss 4(3), 10(4) (as amended); and ANIMALS vol 2 (2008) PARAS 998, 1015-1016. Note that reference to inland waters only applies in relation to the killing, injuring or taking of wild birds: see ss 4(3), 27(1).

6 I.e a licence to kill wild birds and animals under *ibid* s 16 (as amended): see ANIMALS vol 2 (2008) PARAS 864, 1006, 1019.

7 See *ibid* ss 4(5), 10(6) (as amended); and ANIMALS vol 2 (2008) PARAS 998, 1015-1016.

8 As to the protection of seals see para 1089 *et seq* post.

## **UPDATE**

### **950-956 Use of medicines on fish farms ... The principal statutes**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5,

6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/952. Stocking on fish farms.

## **952. Stocking on fish farms.**

Where an inland water<sup>1</sup> consists exclusively of a part of a fish farm<sup>2</sup>, and which, if it discharges into another inland water, does so only through a conduit constructed or adapted for the purpose<sup>3</sup>, there is no requirement to obtain the consent of the Environment Agency<sup>4</sup> to the introduction of fish to those waters, and no offence is committed<sup>5</sup>.

1 For the meaning of 'inland water' see para 854 note 3 ante.

2 For the meaning of 'fish farm' see para 895 note 4 ante; definition applied by the Salmon and Freshwater Fisheries Act 1975 s 41(1).

3 ie for the purpose of a fish farm.

4 As to the fisheries functions of the Environment Agency see paras 847, 930 et seq ante.

5 See the Salmon and Freshwater Fisheries Act 1975 s 30 (as amended); and para 920 ante.

## **UPDATE**

### **950-956 Use of medicines on fish farms ... The principal statutes**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **952 Stocking on fish farms**

NOTE 2--'Fish farm' (1) means a pond, stew, hatchery or other place used for keeping, with a view to their sale or to their transfer to other water, including another fish farm, live fish, live eggs of fish, or foodstuff of fish; (2) and includes any buildings used in connection with a place mentioned in head (1) and the banks and margins of any water in such a place: Salmon and Freshwater Fisheries Act 1975 s 41(1) (amended by the Aquatic Animal Health (England and Wales) Regulations 2009, SI 2009/463).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/953. Financial assistance for fish farming.

## **953. Financial assistance for fish farming.**



The Secretary of State or the Welsh Ministers may in accordance with a scheme made by him or them with the approval of the Treasury<sup>1</sup>, make such grants as appear to be desirable for the purpose of reorganising, developing or promoting fish farming<sup>2</sup> in England and Wales<sup>3</sup>. Any person who makes a false statement or produces a document which is false in a material particular in purported compliance with such a scheme, or who refuses to supply information when required to do so is guilty of an offence<sup>4</sup>.

1 A scheme under the Fisheries Act 1981 s 31 (as amended) may extend to England, or to Wales, or to both of them: s 31(4) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 68). In relation to a scheme extending to England only, or to both England and Wales together, it is the Secretary of State who has power to make the scheme; in relation to a scheme extending to Wales only, it is the Welsh Ministers: see the Fisheries Act 1981 s 31(5) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, Sch 2 para 68); the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and para 846 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

2 'Fish farming', for these purposes, means the breeding, rearing or cultivating of fish (including shellfish) for the purpose of producing food for human consumption: Fisheries Act 1981 s 31(2).

3 Ibid s 31(1). A scheme under s 31 (as amended) may be confined to the making of such grants as appear to the Secretary of State or the Welsh Ministers to be requisite for enabling persons to benefit from any European Community instrument which provides for the making of grants by a Community institution where such grants are also provided by a member state: s 31(3). As respects England, such a scheme must be laid before both Houses of Parliament and will lapse (unless approved by resolution of both Houses) within 40 days of being laid before Parliament, no account being taken of any period when Parliament is dissolved or prorogued or any period when it is adjourned for more than four days: see s 31(6), (7). Any sums required for making payments pursuant to any scheme are to be paid out of moneys provided by Parliament: see s 43. For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

In exercise of the power in the Fisheries Act 1981 s 31 (as amended), the Fish Farming (Financial Assistance) Scheme 1984, SI 1984/341, and the Fish Farming (Financial Assistance) Scheme 1987, SI 1987/1134, have been made.

4 See the Fisheries Act 1981 ss 17, 31(8); and para 1068 post.

## UPDATE

### 950-956 Use of medicines on fish farms ... The principal statutes

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/954. Research, development and advice.

### 954. Research, development and advice.

The Secretary of State and the Welsh Ministers<sup>1</sup> may carry out research and development for the purpose of promoting the breeding, rearing or cultivating of fish (including shellfish<sup>2</sup>) for the purpose of providing food for human consumption<sup>3</sup>. They may also provide scientific technical and other advice and instruction on matters relating to the breeding, rearing or cultivating of fish (including shellfish) whether or not for the purpose of providing food for human consumption<sup>4</sup>. Fees may be charged for any advice or instruction so provided<sup>5</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 'Shellfish' includes crustaceans and molluscs of any kind: Fisheries Act 1981 s 44.

3 Ibid s 32(1). Sums required for exercising powers under s 32 are to be paid out of moneys provided by Parliament: see s 43.

4 Ibid s 32(2).

5 Ibid s 32(3).

## UPDATE

### 950-956 Use of medicines on fish farms ... The principal statutes

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(3) FISH FARMING/955. Exclusion of offences under conservation legislation.

### 955. Exclusion of offences under conservation legislation.

The Secretary of State and the Welsh Ministers<sup>1</sup> may by regulations<sup>2</sup> confer general exemptions so that a person is not guilty of a listed offence<sup>3</sup> by reason of anything done or omitted by him in the course of fish farming<sup>4</sup> if it is done under the authority of such an exemption and in accordance with any conditions attached to the exemption<sup>5</sup>. Such an exemption may make different provision for different methods of fish farming and for other different circumstances<sup>6</sup> and specify conditions to which exemptions are subject<sup>7</sup>.

It is a defence for a person charged with a listed offence<sup>8</sup> to show that he believed on reasonable grounds that the fish with respect to which the offence is alleged to have been committed were produced by fish farming<sup>9</sup>.

1 See the Fisheries Act 1981 s 33(4) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 68). As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As respects England, such regulations are made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament: Fisheries Act 1981 s 33(3). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National

Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

At the date at which this volume states the law, no regulations had been made under the Fisheries Act 1981 s 33 (as amended).

3       Ie an offence listed in *ibid* s 33, Sch 4 Pt I (amended by the Statute Law (Repeals) Act 1986; the Inshore Fishing (Scotland) Act 1984 s 10, Sch 2; and the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 37). The offences are those under: the Salmon and Freshwater Fisheries Act 1975 s 2(2)(a) (see para 858 ante), s 3 (see para 856 ante), s 5(1), (4) (see para 916 ante), s 19 (see paras 855, 857, 869-871 ante), s 27 (see para 864 ante); byelaws made under the Water Resources Act 1991 Sch 25 para 6(2)(a)-(g) and byelaws made under the Sea Fisheries Regulation Act 1966 s 5 (see para 974 post); the Sea Fisheries (Shellfish) Act 1967 s 17 (see para 1046 post); and the Sea Fish (Conservation) Act 1967 s 1(1), (3) (see para 988 post), s 3(5) (see para 980 post), s 4(3), (9A) (as added) (see para 983 post), s 4A(3) (as added) (see para 986 post), s 5(1), (6) (see para 989 post), s 6 (see para 992 post).

4       'Fish farming', for these purposes, means the breeding, rearing or cultivating of fish (including shellfish) whether or not for the purposes of producing food for human consumption (but does not, in relation to the defence in the Fisheries Act 1981 s 33(5) (see the text and note 9 *infra*) include fish bred, reared or cultivated in captivity which have later been released into the wild): s 33(6).

5       *Ibid* s 33(1), (2).

6       *Ibid* s 33(2)(a).

7       *Ibid* s 33(2)(b).

8       Ie an offence listed in *ibid* Sch 4 Pt II (amended by Statute Law (Repeals) Act 1986). The offences in relation to freshwater fish include offences under the Salmon and Freshwater Fisheries Act 1975 s 2(2)(b) (see para 858 ante), s 22(1) (see para 876 ante), s 23(3) (see para 880 ante).

9       Fisheries Act 1981 s 33(5). See note 4 *supra*.

## UPDATE

### 950-956 Use of medicines on fish farms ... The principal statutes

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 955-956 Exclusion of offences under conservation legislation, The principal statutes

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 955 Exclusion of offences under conservation legislation

NOTES 3, 8--Fisheries Act 1981 Sch 4 Pts 1, 2 further amended: Marine and Coastal Access Act 2009 Sch 15 para 5, Sch 16 para 18, Sch 22 Pts 4, 5 (amendment made by Sch 22 Pt 4 in force in relation to Wales only: SI 2010/630). As from a day to be appointed Fisheries Act 1981 Sch 4 Pt 1 further amended: Marine and Coastal Access Act 2009 Sch 14 para 10.

NOTE 3--Water Resources Act 1991 Sch 25 para 6(2) amended: Marine and Coastal Access Act 2009 Sch 16 para 24, Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/956. The principal statutes.

## **(4) REGULATION OF SEA FISHERIES**

### **(i) The Legislation**

#### **956. The principal statutes.**

To a great extent English sea fishery law is regulated by statutes<sup>1</sup> and by statutory instruments made under statutory powers. Much of the legislation gives effect in English law to international agreements<sup>2</sup>. In addition to the statutes regulating sea fisheries the territorial extent of British fishery limits is governed by the Fishery Limits Act 1964<sup>3</sup>.

The Sea Fisheries Regulation Act 1966, consolidating certain earlier enactments, provides for the regulation of inshore fisheries by local sea fisheries committees which are empowered to make byelaws and to appoint fishery officers<sup>4</sup>.

The Sea Fish (Conservation) Act 1967, also consolidating certain earlier enactments, regulates fishing for sea fish and the landing and commercial use of sea fish, and authorises measures for the increase or improvement of marine resources. In particular it contains provisions concerning the size limits of fish, the regulation of nets and gear, the licensing of British fishing boats, and the restriction of fishing to give effect to international agreements<sup>5</sup>.

The Sea Fisheries (Shellfish) Acts 1967 and 1973, which consolidate certain enactments relating to shellfish fisheries and shellfish, regulate fishing for shellfish and the operation of shellfish beds<sup>6</sup>.

The Sea Fisheries Act 1968 contains provisions as to sea fishery officers and provides for the making of orders regulating fishing operations for the purpose of giving effect to conventions<sup>7</sup>.

The Fisheries Act 1981 abolished the Herring Board and the White Fish Authority and created the Sea Fish Industry Authority. It also contains provisions as to assistance for the fishing and fish farming industry<sup>8</sup>.

The Fishery Limits Act 1964, with certain designation orders made under it<sup>9</sup>, prescribes in accordance with international agreements<sup>10</sup> the fishery limits of the British Islands and the rights of the fishing boats of other countries to fish within those limits<sup>11</sup>. Restrictions on British fishing boats in relation to fishing for and trans-shipment of sea fish in specified areas are contained in the British Fishing Boats Act 1983<sup>12</sup>.

The statutes relating to merchant shipping contain special provisions in respect of fishing vessels<sup>13</sup>.

1 The principal statutes are: the Sea Fisheries Regulation Act 1966; the Sea Fish (Conservation) Act 1967; the Sea Fisheries (Shellfish) Acts 1967 and 1973; the Sea Fisheries Act 1968; and the Fisheries Act 1981. In addition to statutes which relate specifically to sea fisheries, the statutes relating to merchant shipping have in some cases special application to fishing vessels: see para 1021 et seq post.

2 As to conventions and agreements see para 960 post.

3 See note 9 *infra*.

4 As to the Sea Fisheries Regulation Act 1966 see paras 958, 964 *et seq post*. Any reference in the Act, in whatever terms, to ships, vessels or boats or activities or places connected therewith, has effect as if the reference included a reference to hovercraft or activities or places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A.

5 As to the Sea Fish (Conservation) Act 1967 see paras 958, 980 *et seq post*. As to the international conventions and agreements to which the Act gives effect see para 960 *post*. As to the application of the Act to hovercraft see the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A.

6 As to the Sea Fisheries (Shellfish) Acts 1967 and 1973 (which may be collectively so cited by virtue of the Sea Fisheries (Shellfish) Act 1973 s 2(1)), see paras 958, 1032 *et seq post*.

7 As to the Sea Fisheries Act 1968 see paras 958, 1002 *et seq post*.

8 See para 1054 *et seq post*.

9 See paras 961, 998 *post*. Any reference in the Fishery Limits Act 1964, in whatever terms, to ships, vessels or boats or activities or places connected therewith, has effect as if the reference included a reference to hovercraft or activities or places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A.

10 As to these agreements see para 960 *post*.

11 See further para 998 *post*.

12 See para 989 *post*.

13 See para 1021 *et seq post*.

## **UPDATE**

### **950-956 Use of medicines on fish farms ... The principal statutes**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **955-956 Exclusion of offences under conservation legislation, The principal statutes**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **956 The principal statutes**

TEXT AND NOTES 1, 4--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/957. Earlier legislation.

### **957. Earlier legislation.**

Older statutes relating to sea fisheries still in force include the White Herring Fisheries Act 1771<sup>1</sup>, the Fisheries Act 1891<sup>2</sup> and the North Sea Fisheries Act 1893<sup>3</sup>. Certain provisions of the Sea Fisheries Act 1868<sup>4</sup>, the Sea Fish Industry Act 1951<sup>5</sup> and the Sea Fish Industry Act 1962<sup>6</sup> are still in force.

1 See eg para 802 ante.

2 See eg paras 959 note 29, 1018 post.

3 See para 1014 post.

4 See para 1021 post.

5 In the Sea Fish Industry Act 1951 s 25. This provision is repealed as from a day to be appointed by order under the Sea Fisheries Act 1968 ss 22(2), 23(2), Sch 2 Pt II. At the date at which this volume states the law no such day had been appointed.

6 In the Sea Fish Industry Act 1962 s 18. This provision is repealed as from a day to be appointed by order under the Sea Fisheries Act 1968 s 22(2), 23(2), Sch 2 Pt II. At the date at which this volume states the law no such day had been appointed.

### **UPDATE**

### **957 Earlier legislation**

TEXT AND NOTES 1, 3--White Herring Fisheries Act 1771 and North Sea Fisheries Act 1893 repealed: Marine and Coastal Access Act 2009 s 234(a), (d), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/958. Territorial scope of enactments.

### **958. Territorial scope of enactments.**

The territorial scope of the enactments relating to sea fisheries varies both as to countries and as to the areas in which persons and fishing boats are subject to their provisions. The Sea Fisheries Regulation Act 1966 applies only to England and Wales<sup>1</sup>. Its provisions may be applied in sea fisheries districts comprising any part of the sea within the national or territorial waters of the United Kingdom<sup>2</sup> adjacent to England or Wales, either with or without any part of the adjoining coast<sup>3</sup>.

The Sea Fish (Conservation) Act 1967 applies to England and Wales and to Scotland<sup>4</sup> and extends in part to Northern Ireland<sup>5</sup>; and certain provisions of the Act may by Order in Council be applied to the Isle of Man or any of the Channel Islands<sup>6</sup>. In general the provisions of the Act

apply to British fishing boats in specified areas or, in some cases, wherever they may be, and to foreign or Scottish fishing boats within British fishery limits<sup>7</sup>.

The Sea Fisheries (Shellfish) Act 1967 applies to England and Wales and Scotland and extends in part to the Isle of Man and the Channel Islands<sup>8</sup>. The provisions of the Act apply in part to the shore and bed of the sea, or of an estuary or tidal river, and within waters adjacent to England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured<sup>9</sup>.

The Sea Fisheries Act 1968 applies to British fishing boats wherever they may be and to Scottish and foreign fishing boats within relevant British fishing limits<sup>10</sup>; some provisions of the Act may be extended by Order in Council to the Isle of Man or any of the Channel Islands and to British fishing boats registered in those islands<sup>11</sup>.

The Fishery Limits Act 1976 applies to the whole of the United Kingdom<sup>12</sup>.

The Merchant Shipping Act 1995<sup>13</sup> allows rules to be made in relation to the construction of fishing vessels registered in the United Kingdom<sup>14</sup>.

1 See the Sea Fisheries Regulation Act 1966 s 22(2).

2 For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 See the Sea Fisheries Regulation Act 1966 s 1(1)(a); and para 964 post.

4 See note 7 infra. The Sea Fish (Conservation) Act 1967 applies with certain modifications to Scotland: see s 22A (added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43; and amended by the Scotland Act 1998 (Consequential Modifications) Order 2000, SI 2000/2040, art 2, Schedule Pt I para 3, Pt III).

5 For the provisions excluded from application to Northern Ireland see the Sea Fish (Conservation) Act 1967 s 23 (amended by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I; and the Fisheries Act 1981 ss 19(2)(e), 22(4), 46(2), Sch 5 Pt II).

6 See the Sea Fish (Conservation) Act 1967 s 24(1), (2) (s 24(1) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43). See the Sea Fish (Conservation) (Isle of Man) Order 1973, SI 1973/237; the Sea Fish (Conservation) (Manx Boats) Order 1973, SI 1973/238; the Sea Fish (Conservation) (Isle of Man) Order 1977, SI 1977/1244; the Sea Fish (Conservation) (Channel Islands Boats) Order 1978, SI 1978/280; the Sea Fish (Conservation) (Manx Boats) Order 1978, SI 1978/281; and the Sea Fish (Conservation) (Channel Islands) Order 1981, SI 1981/737. As to the power to vary or revoke such orders see the Sea Fish (Conservation) Act 1967 s 24(3).

7 See *ibid* s 1(1), (3), (4) (as substituted and amended), s 3(1), (2) (as amended), s 4(1), (5) (as substituted and amended), s 5(1), (8) (as substituted), s 6(1) (as amended), s 15(3) (as substituted and amended), ss 17, 18 (both as amended); and paras 936 ante, 980, 988-989, 992, 1006, 1012 post.

8 See the Sea Fisheries (Shellfish) Act 1967 ss 1(1A), 23(1), 25(2) (s 1(1A) added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 42).

9 See the Sea Fisheries (Shellfish) Act 1967 s 1(1) (as amended); and para 1032 post. Some provisions of the Act can also apply in inland waters: see s 12(2)(b); and para 1041 post.

10 See the Sea Fisheries Act 1968 s 5(2) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48). See also the Sea Fisheries Act 1968 ss 5(2)(a), (b), 8(1), 9(1), 10(2), (3) (all as amended); and paras 990, 1002-1003, 1010 post.

11 Sea Fisheries Act 1968 s 21. See the Sea Fisheries (Isle of Man) Order 1971, SI 1971/1747; the Sea Fishing (Manx Boats) Order 1971, SI 1971/1748; the Sea Fisheries (Isle of Man) Order 1973, SI 1973/236; the Sea Fish (Channel Islands) Order 1973, SI 1973/1319; and the Sea Fisheries (Channel Islands Boats) Order 1973, SI 1973/1320. As to the power to vary or revoke such Orders in Council see the Sea Fisheries Act 1968 s 21(2).

12 See the Fishery Limits Act 1976 s 1(1); and para 961 post.

13 See the Merchant Shipping Act 1995 Pt V Ch II (ss 121-127) (as amended).

14 See para 1022 et seq post.

## **UPDATE**

### **958-959 Territorial scope of enactments, Subordinate legislation**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **958 Territorial scope of enactments**

TEXT AND NOTES 1, 3--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/959. Subordinate legislation.

### **959. Subordinate legislation.**

The principal statutes which have been cited contain many provisions enabling the Secretary of State and the Welsh Ministers<sup>1</sup> to make subordinate legislation for various purposes. These purposes include, for example, the creation of sea fisheries districts<sup>2</sup>; the constitution of local fisheries committees, including the number and mode of appointment of the members of such committees<sup>3</sup>; the making of byelaws<sup>4</sup>; the conferring on harbour or water authorities of the powers of fisheries committees<sup>5</sup>; the imposition of size limits for fish<sup>6</sup>; the regulation of nets and gear<sup>7</sup>; the licensing of British fishing boats<sup>8</sup>; restrictions on fishing for sea fish<sup>9</sup>; prohibitions on the landing of sea fish caught in certain areas<sup>10</sup>; the regulation of the landing of foreign-caught sea fish<sup>11</sup>; the conferring of powers on British sea fishery officers<sup>12</sup>; provision for the establishment or improvement, and for the maintenance and regulation, of fisheries for shellfish<sup>13</sup>; prohibitions on the deposit of shellfish in designated waters<sup>14</sup>; prohibitions on the importation of shellfish into designated areas<sup>15</sup>; the constitution of oyster districts<sup>16</sup>; prohibitions on the landing and sale of lobsters carrying spawn<sup>17</sup>; the regulation of the conduct and safeguarding of fishing operations and ancillary operations<sup>18</sup>; the specification of foreign sea fishery officers appointed to enforce conventions<sup>19</sup>; the prescription of rules for the construction and survey of fishing vessels and the making of regulations as to fees<sup>20</sup>. The powers to make subordinate legislation in respect of the white fish and herring industries are described elsewhere in this title<sup>21</sup>.

In general<sup>22</sup>, the powers mentioned are exercisable by order, regulations or rules<sup>23</sup>, made by statutory instrument<sup>24</sup>, and any orders may usually be varied or revoked by subsequent order<sup>25</sup>.



In many cases the English instrument must be laid before Parliament and the Welsh instrument must be laid before the National Assembly for Wales<sup>26</sup>; in some cases the English instrument is subject to annulment in pursuance of a resolution of either House of Parliament<sup>27</sup>. Powers to extend the legislation to the Channel Islands and the Isle of Man are exercisable by Order in Council<sup>28</sup>.

Certain other powers as to subordinate legislation are contained in older statutes<sup>29</sup>, and some subordinate legislation made under repealed statutes has effect by virtue of saving clauses in more recent statutes<sup>30</sup>.

1 As to the principal statutes see para 956 ante. As to the Secretary of State and the Welsh Ministers see para 846 ante. In the case of the Sea Fisheries Regulation Act 1966, the Sea Fish (Conservation) Act 1967 and the Sea Fisheries (Shellfish) Act 1967, there are saving provisions in respect of instruments under earlier Acts: see the Sea Fisheries (Shellfish) Act 1967 s 24(3); the Sea Fisheries Regulation Act 1966 s 21(2), and the Sea Fish (Conservation) Act 1967 s 25(2). See further para 956 ante.

2 See the Sea Fisheries Regulation Act 1966 s 1 (as amended); and para 964 post.

3 See *ibid* s 2(5); and para 964 post.

4 See *ibid* s 5 (as amended); and paras 974-975 post.

5 See *ibid* s 18(2); and para 964 post.

6 See the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended); and para 988 post.

7 See *ibid* s 3(1) (as amended); and para 980 post.

8 See *ibid* s 4(1) (as substituted and amended); and para 983 post.

9 See *ibid* s 5(1) (as substituted); and para 989 post.

10 See *ibid* s 6(1) (as amended); and para 992 post.

11 See *ibid* s 8(1) (as amended); and para 969 post.

12 See *ibid* s 15(3) (as substituted and amended); and para 1006 post.

13 See the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended); and para 1032 post.

14 See *ibid* s 12(1); and para 1041 post.

15 See *ibid* s 13 (as amended); and para 1042 post.

16 See *ibid* s 16 (as amended); and para 1044 post.

17 See *ibid* s 17(3) (as amended); and para 1045 post.

18 See the Sea Fisheries Act 1968 s 5(1) (as amended); and para 990 post.

19 See *ibid* s 7(4); and para 1003 post.

20 See the Merchant Shipping Act 1995 Pt V Ch II (ss 121-127) (as amended); and para 1022 et seq post.

21 See para 1054 et seq post.

22 For an exception see the Sea Fisheries Regulation Act 1966 s 5 (as amended); and the text and note 4 *supra*. The power to make regulations under s 5 (as amended) is exercisable by statutory instrument: see s 5(1).

23 See the enactments cited in notes 2, 3, 5-20 *supra*.

24 See the Sea Fisheries Regulation Act 1966 ss 1(2), 18(2); the Sea Fish (Conservation) Act 1967 s 20(2) (amended by the Fisheries Act 1981 s 21(2)(b)); the Sea Fisheries (Shellfish) Act 1967 s 20(1); the Sea Fisheries

Act 1968 s 18(1); the Fishery Limits Act 1976 s 6(1); and the Merchant Shipping Act 1995 s 306(1) (substituted by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 18(2)).

25 See the Sea Fisheries Regulation Act 1966 ss 1(1), 18(2) (s 1(1) amended by the Local Government Act 1972 ss 101(8), (9), 272(1), Sch 30; the Local Government Act 1985 s 16, Sch 8 para 19; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 26(1)); the Sea Fish (Conservation) Act 1967 s 20(1); the Sea Fisheries (Shellfish) Act 1967 ss 1(6), 12(8), 13(3), 16(4), 17(5); the Sea Fisheries Act 1968 s 18(3); and the Fishery Limits Act 1976 s 6(2).

26 A draft of a statutory instrument containing any order under the Sea Fisheries Regulation Act 1966 s 1 (as amended) must be laid before Parliament (s 1(2)), as must a statutory instrument containing any order under the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended), s 3 (as amended) or s 8 (as amended), certain statutory instruments containing orders under s 15 (as amended) (s 20(3)), instruments containing an order under the Sea Fisheries (Shellfish) Act 1967 s 17(3) (s 20(3)), and a statutory instrument containing an order made under any provision of the Sea Fisheries Act 1968 (s 18(2) (amended by the Sea Fish Industry Act 1970 s 61, Sch 6 Pt I)). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

27 Statutory instruments containing orders made under the Sea Fish (Conservation) Act 1967 s 4 (as substituted and amended), s 4A (as added and amended), s 5 (as amended) (in most cases), s 6 (as amended) and, in some cases, s 15 (as amended), and under the Sea Fisheries (Shellfish) Act 1967 s 1 (as substituted and amended), are subject to annulment in pursuance of a resolution of either House of Parliament: Sea Fish (Conservation) Act 1967 s 20(5) (amended by the Fisheries Act 1981 s 21(2)(b); and the Sea Fish Conservation Act 1992 s 7(2)); Sea Fisheries (Shellfish) Act 1967 s 20(2). Certain other instruments under the Sea Fish (Conservation) Act 1967 must be approved by Parliamentary resolution: see s 20(4), (6); and paras 969, 989 post. See also the Merchant Shipping Act 1995 s 306(2) (substituted by the Merchant Shipping and Maritime Security Act 1997 Sch 6 para 18(3)).

28 See para 958 ante.

29 See eg the Fisheries Act 1891 s 2 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 9); and the North Sea Fisheries Act 1893 s 5.

30 See eg the Sea Fish (Conservation) Act 1967 s 20(2).

## UPDATE

### 958-959 Territorial scope of enactments, Subordinate legislation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 959 Subordinate legislation

NOTES 1-5, 22-26--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

NOTE 26--Sea Fisheries (Shellfish) Act 1967 s 20(3) amended: Marine and Coastal Access Act 2009 s 213(4).

NOTE 29--North Sea Fisheries Act 1893 repealed: Marine and Coastal Access Act 2009 s 234(d), Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/960. International conventions.

## **960. International conventions.**

Following increasing encroachment on the doctrine of the freedom of the sea, the United Nations held a number of sessions on the law of the sea. On 29 April 1958, four Conventions were adopted, following the first United Nations Conference on the Law of the Sea held from 24 February to 27 April in that year at Geneva, on the following subjects<sup>1</sup>:

- (1) the territorial sea and the contiguous zone<sup>2</sup>;
- (2) the high seas<sup>3</sup>;
- (3) fishing and conservation of the living resources of the high seas<sup>4</sup>; and
- (4) the continental shelf<sup>5</sup>.

There was also an optional Protocol concerning the compulsory settlement of disputes, and nine resolutions were adopted relating to nuclear tests on the high seas, the pollution of the high seas by radioactive materials, the humane killing of marine life and other matters, including the matter of convening a second United Nations Conference on the Law of the Sea<sup>6</sup>.

On 10 December 1982, the United Nations Convention on the Law of the Sea 1982 was adopted at Montego Bay, Jamaica after nine years of work by the Third United Nations Conference on the Law of the Sea<sup>7</sup>. This Convention entered into force on 16 November 1994, twelve months after the sixtieth instrument of ratification was received. The Convention was comprehensive and covered:

- (a) introduction<sup>8</sup>;
- (b) the territorial sea and contiguous zone<sup>9</sup>;
- (c) straits used for international navigation<sup>10</sup>;
- (d) archipelago states<sup>11</sup>;
- (e) exclusive economic zones<sup>12</sup>;
- (f) the continental shelf<sup>13</sup>;
- (g) the high seas<sup>14</sup>;
- (h) regime of islands<sup>15</sup>;
- (i) enclosed or semi-enclosed seas<sup>16</sup>;
- (j) right to access of land-locked states to and from the sea and freedom of transit<sup>17</sup>;
- (k) mining of the sea bed<sup>18</sup>;
- (l) protection and preservation of the marine environment<sup>19</sup>;
- (m) marine scientific research<sup>20</sup>;
- (n) development and transfer of marine technology<sup>21</sup>;
- (o) settlement of disputes<sup>22</sup>;
- (p) general provisions<sup>23</sup>;
- (q) final clauses<sup>24</sup>;

(r) annexes<sup>25</sup>.

The United Kingdom was not an original signatory to the 1982 Convention but became a party to the Convention on 24 August 1997<sup>26</sup>.

The United Kingdom is also party to a number other international conventions<sup>27</sup> and bilateral conventions<sup>28</sup> relating to maritime matters.

1 See the Report on the First United Nations Conference on the Law of the Sea, with Final Act, Conventions and Resolutions (1958) (Cmnd 584). Certain provisions of the 1958 conference were made effective by the Continental Shelf Act 1964 (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172) and by the Tokyo Convention Act 1967 s 4 (repealed) (definition of 'piracy': see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 156). See further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 147 et seq; SHIPPING AND MARITIME LAW vol 93 (2008) PARA 8 et seq.

2 le the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958; TS 3 (1965); Cmnd 2511).

3 le the Convention on the High Seas (Geneva, 29 April 1958; TS 5 (1963); Cmnd 1929).

4 le the Convention on Fishing and Conservation of the Living Resources of the High Seas (Geneva, 29 April to 31 October 1958; TS 39 (1966); Cmnd 3028).

5 le the Convention on the Continental Shelf (Geneva, 29 April to 31 October 1958; TS 39 (1964); Cmnd 2422).

6 See note 1 supra.

7 le the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941). See also the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).

8 le the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982 to 9 December 1984; TS 3 Misc 11 (1983); Cmnd 8941) Pt I (art 1).

9 le ibid Pt II (arts 2-33), which relates to: general provisions (art 2); limits of the territorial sea (arts 3-16); innocent passage in the territorial sea (arts 17-32); and contiguous zone (art 33).

10 le ibid Pt III (arts 34-45), which relates to: general provisions (arts 34-36); transit passage (arts 37-44); and innocent passage (art 45).

11 le ibid Pt IV (arts 46-54).

12 le ibid Pt V (arts 55-75).

13 le ibid Pt VI (arts 76-85).

14 le ibid Pt VII (arts 86-120), which relates to: general provisions (arts 86-115); and management and conservation of the living resources of the high seas (arts 116-120).

15 le ibid Pt VIII (art 121).

16 le ibid Pt IX (arts 122, 123).

17 le ibid Pt X (arts 124-132).

18 le ibid Pt XI (arts 133-191), which relates to: general provisions (arts 133-135); principles governing the Area (arts 136-149); conduct of activities in the Area (arts 150-155); the Authority (arts 156-185); and settlement of disputes (arts 186-191). 'The Area' means the sea bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (art 1(1)(1)); and 'activities in the Area' means all activities of exploration for, and exploitation of, the resources of the Area (art 1(1)(3)).

19     *le ibid* Pt XII (arts 192-237), which relates to: general provisions (arts 192-196); global and regional co-operation (arts 197-201); technical assistance (arts 202, 203); monitoring and environmental assessment (arts 204-206); international rules and national legislation to prevent, reduce and control pollution of the marine environment (arts 207-212); enforcement (arts 213-222); safeguards (arts 223-233); ice-covered areas (art 234); responsibility and liability (art 235); sovereign immunity (art 236); and obligations under other Conventions on the protection and preservation of the marine environment (art 237).

20     *le ibid* Pt XIII (arts 238-265), which relates to: general provisions (arts 238-241); international co-operation (arts 242-244); conduct and promotion of marine scientific research (arts 245-257); legal status of scientific research installations or equipment in the marine environment (arts 258-262); responsibility and liability (art 263); and settlement of disputes and interim measures (arts 264, 265).

21     *le ibid* Pt XIV (arts 266-278), which relates to: general provisions (arts 266-269); international co-operation (arts 270-274); national and regional marine scientific and technological centres (arts 275-277); and co-operation among international organisations (art 278).

22     *le ibid* Pt XV (arts 279-299), which relates to: general provisions and general obligations (arts 279-285); compulsory procedures entailing binding decisions (arts 286-296); and limitations and exceptions to applicability of arts 286-296 (arts 297-299).

23     *le ibid* Pt XVI (arts 300-304).

24     *le ibid* Pt XVII (arts 305-320).

25     *le Annex* I (highly migratory species); Annex II (Commission on the Limits of the Continental Shelf); Annex III (basic conditions of prospecting, exploration and exploitation); Annex IV (statute of the Enterprise); Annex V (conciliation); Annex VI (statute of the International Tribunal for the Law of the Sea); Annex VII (arbitration); Annex VIII (special arbitration); Annex IX (participation by international organisations).

26     See the London Gazette (29 August 1997).

27     See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 8.

28     See eg the Fisheries Agreement (Oslo, 17 November 1960; TS 25 (1961); Cmnd 1352) (implemented by the Anglo-Norwegian Sea Fisheries Order 1961, SI 1961/342: see para 1001 post); the Exchange of Notes between Great Britain and Iceland Concerning Fishing in the Icelandic Fisheries Zone (Oslo, 1 June 1976; TS 73 (1976); Cmnd 6545) (see para 1003 post); the Agreement concerning Fishing in the Bay of Granville with Exchange of Notes and Declaration (St Helier, 4 July 2000; TS 9 (2004); Cm 6139); the Declaration respecting the North Sea Fisheries (Brussels, 2 May 1891; TS 1 (1892); C 6587) (implemented by the Fisheries Act 1891, and set out in the Schedule: see para 1020 post); the Convention respecting the Liquor Traffic in the North Sea (The Hague, 16 November 1887; TS 13 (1894); C 7354) (implemented by the North Sea Fisheries Act 1893, and set out in the Schedule: see para 1014 post).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(i) The Legislation/961. Fishery limits.

## **961. Fishery limits.**

In response to the unilateral claim by some countries<sup>1</sup> of a 200 mile fishery limit and the consequent erosion of the three mile limit based on nineteenth century conventions the Fishery Limits Act 1976 introduced a 200 mile limit<sup>2</sup>. British fishery limits extend to 200 miles<sup>3</sup> from the baselines from which the breadth of the territorial sea adjacent to the United Kingdom<sup>4</sup>, the Channel Islands, and the Isle of Man is measured<sup>5</sup>. However, these limits do not extend beyond the median line where the United Kingdom baselines and the corresponding baselines of other countries are less than 200 miles apart; the median line is every point equidistant between the two<sup>6</sup>. The Secretary of State or the Welsh Ministers<sup>7</sup> may by order<sup>8</sup> designate any country outside the United Kingdom, the Channel Islands and the Isle of Man and, in relation to it, areas within relevant British fishery limits<sup>9</sup> in which, and descriptions of sea fish<sup>10</sup> for which, fishing boats<sup>11</sup> registered in that country may fish<sup>12</sup>. For the purpose of implementing any international

agreement or the arbitral award of an international body, or otherwise, the limits may be declared by Order in Council to extend to such other line as may be specified in the order<sup>13</sup>.

The Secretary of State or the Welsh Ministers may, with the approval of the Treasury, incur expenditure in employing officers and vessels and generally taking such measures as appear necessary to protect British fisheries<sup>14</sup>.

1 See eg Chilean Presidential Declaration of 23 June 1947; Laws and Regulations on the Regime of the Territorial Sea 4, UN Publications ST/LEG/Ser B/6; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 123 et seq.

2 The earliest extant convention adopting a three-mile fishery limit was the Convention of London concerning Fisheries and Boundaries (London, 20 October 1818; 6 BFSB 3; Cmd 3262). The most important nineteenth century convention adopting a multilateral three-mile fishery limit was the Convention for Regulating the Police of the North Sea Fisheries (The Hague, 6 May 1882; 73 BFSP 39).

3 'Miles' means international nautical miles of 1,852 metres: Fishery Limits Act 1976 s 8.

4 For the meaning of 'United Kingdom' see para 843 note 1 ante. The determination of fishery limits is a reserved matter and outside the scope of the Scottish Parliament: see the Scotland Act 1998 s 30, Sch 5 para C6. The Fishery Limits Act 1976 applies to Northern Ireland: see s 10. As to the application of the Fishery Limits Act 1976 to Guernsey see the Fishery Limits Act 1976 (Guernsey) Order 1989, SI 1989/2407.

5 Fishery Limits Act 1976 s 1(1). References to British fishery limits in any enactment for the time being in force relating to sea fishing or whaling are to the limits set by or under s 1: s 1(5); and see s 10(2)(b). As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31.

6 See *ibid* s 1(3), (4).

7 As to the Secretary of State and the Welsh Ministers see para 846 ante.

8 Orders made under any provision of the Fishery Limits Act 1976 are to be made by statutory instrument: s 6(1). Power conferred by any provision of that Act to make an Order in Council or other order includes power to vary or revoke by a further Order in Council or order under that provision: s 6(2).

9 'Relevant British fishery limits' means British fishery limits so far as they do not relate to the Scottish zone; and 'the Scottish zone' means the sea within British fishery limits (that is, the limits set by or under *ibid* s 1) which is adjacent to Scotland: s 8 (definition added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 57); Scotland Act 1998 s 126(1).

10 'Sea fish' includes shellfish, salmon and migratory trout; and 'sea fishing' has a corresponding meaning: Fishery Limits Act 1976 s 8.

11 'Fishing boat' means any vessel for the time being employed in fishing operations or any ancillary operations: *ibid* s 8.

12 *Ibid* s 2(1) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 57). The following orders have been made: the Fishing Boats (European Economic Community) Designation Order 1983, SI 1983/253 (as amended); and the Fishing Boats (Specified Countries) Designation Order 1996, SI 1996/1035 (as amended). See further para 998 post.

13 Fishery Limits Act 1976 s 1(2). See the Fishery Limits Order 1997, SI 1997/1750; and the Fishery Limits Order 1999, SI 1999/1741.

14 Fishery Limits Act 1976 s 7(1). Any such expenses or any increased administrative expenses are to be defrayed out of money provided by Parliament: s 7(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

## UPDATE

### 961-962 Fishery limits, Pollution

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **961 Fishery limits**

TEXT AND NOTES 5, 6--Fishery Limits Act 1976 s 1(1) substituted, s 1(3), (4) repealed: Marine and Coastal Access Act 2009 Sch 4 para 2(2), (3), Sch 22 Pt 1 (not yet in force). See further Marine and Coastal Access Act 2009 Sch 4 para 2(4), (5) (not yet in force).

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## **962. Pollution.**

There is no common law right to pollute the sea by the discharge of sewage<sup>1</sup>; and it is a statutory offence to cause or knowingly to permit poisonous, noxious or polluting matter or any solid waste matter to enter controlled waters<sup>2</sup>, or to use in or near any waters, including waters adjoining the sea coast, any poison or other noxious substance with intent to take or destroy fish<sup>3</sup>. Special provisions apply to unlawful deposits in oyster beds<sup>4</sup> and the discharge of radioactive waste<sup>5</sup>.

A person who deposits any substances or articles anywhere in the sea from a vehicle, vessel, aircraft, hovercraft or marine structure without a licence is guilty of an offence<sup>6</sup>.

1 *Foster v Warblington UDC* [1906] 1 KB 648 at 665, 689, CA. See also *Hobart v Southend-on-Sea Corpn* (1906) 75 LJB 305 (compromised on appeal 22 TLR 530, CA). A right to pollute the sea cannot be acquired by prescription: *Owen v Faversham Corpn* (1908) 73 JP 33, CA. See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 270 et seq.

2 See the Water Resources Act 1991 s 85; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 291. 'Controlled waters' includes the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales is measured: see s 104(1); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 289.

3 See the Salmon and Freshwater Fisheries Act 1975 s 5(1) (as amended); and para 916 ante. As to pollution generally see para 917 ante.

4 See para 1038 post.

5 See para 919 ante.

6 See the Food and Environment Protection Act 1985 ss 5, 9(1) (both as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 525, 535. As to special provisions relating to harbours see PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 710. See also the Pollution Prevention and Control Act 1999 s 2; the regulations made thereunder; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 186.

## **UPDATE**

### **961-962 Fishery limits, Pollution**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## 962 Pollution

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (ii) Administrative Authorities and Finance/A. BRITISH SEA FISHERY OFFICERS/963. British sea fishery officers.

### (ii) Administrative Authorities and Finance

#### A. BRITISH SEA FISHERY OFFICERS

##### 963. British sea fishery officers.

The following persons are British sea fishery officers for the purposes of the Sea Fisheries Acts<sup>1</sup>:

- (1) officers of the sea fishery inspectorates of the Secretary of State and the Welsh Ministers<sup>2</sup> other than assistant fishery officers<sup>3</sup>;
- (2) commissioned officers of any of Her Majesty's ships<sup>4</sup>;
- (3) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force<sup>5</sup>;
- (4) officers of the fishery protection service of the Secretary of State holding the rank of commander, first officer or second officer<sup>6</sup>; and
- (5) other persons appointed as British sea fishery officers by the Secretary of State or the Welsh Ministers<sup>7</sup>.

The Secretary of State or the Welsh Ministers may appoint any person to exercise and perform the powers and duties of a British sea fishery officer, subject to such limitations as may be specified in the instrument appointing him<sup>8</sup>. The appointment may be limited to particular matters or to a particular area or to a particular order or class of orders, or in more than one of these ways<sup>9</sup>. For the purposes of the Sea Fisheries Acts a person so appointed is a British sea fishery officer within those limitations, but not otherwise<sup>10</sup>.

1 'Sea Fisheries Acts' means any enactments for the time being in force relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout: Sea Fisheries Act 1968 s 19(1).

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 Sea Fisheries Act 1968 s 7(1)(a).

4 Ibid s 7(1)(b).

5 Ibid s 7(1)(c). See ARMED FORCES.

6 Ibid s 7(1)(d).

7 Ibid s 7(1)(g). Certain moribund enactments provide for sea fishery officers: see the Sea Fish Industry Act 1951 s 25; and the Sea Fish Industry Act 1962 s 18. These provisions are both repealed as from a day to be



appointed by the Sea Fisheries Act 1968 s 22(2), Sch 2 Pt II. At the date at which this volume states the law no such day had been appointed.

8 Ibid s 7(2).

9 Ibid s 7(3).

10 Ibid s 7(2). As to foreign sea fishery officers see para 1003 post.

## UPDATE

### 963 British sea fishery officers

TEXT AND NOTES 3-7--Sea Fisheries Act 1968 s 7(1) amended, s 7(1A) added: Marine and Coastal Access Act 2009 s 239, Sch 22 Pt 6.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (ii) Administrative Authorities and Finance/B. LOCAL FISHERIES DISTRICTS, COMMITTEES AND OFFICERS/964. Local fisheries committees.

## ***B. LOCAL FISHERIES DISTRICTS, COMMITTEES AND OFFICERS***

### **964. Local fisheries committees.**

On the application of a county, county borough or metropolitan district council the Secretary of State or the Welsh Ministers<sup>1</sup> may make an order<sup>2</sup> creating a sea fisheries district comprising any part of the sea within the national<sup>3</sup> or territorial waters<sup>4</sup> of the United Kingdom<sup>5</sup> adjacent to England or Wales, either with or without any part of the adjoining coast<sup>6</sup>. The order may define the limits of the district and the area chargeable with any statutory expenses<sup>7</sup>, and may provide for the constitution of a local fisheries committee for the regulation of the sea fisheries carried on within the district<sup>8</sup>.

An order constituting a local fisheries committee may contain such regulations<sup>9</sup> with respect to the number and mode of appointment of the members of the committee, and with respect to other matters relating to the constitution of the committee, as the Secretary of State or the Welsh Ministers may think expedient<sup>10</sup>.

By a subsequent order made on the like application, or on the application of the local fisheries committee and after consultation with every county, county borough or metropolitan district council concerned, the Secretary of State or the Welsh Ministers may vary or revoke any order made under these provisions<sup>11</sup>, or unite two or more districts or parts of districts into a separate sea fisheries district or dissolve any sea fisheries district that may have been created<sup>12</sup>.

Local fisheries committees must have regard to the conservation of marine flora and fauna and endeavour to achieve a reasonable balance between that consideration and any other considerations to which they are required to have regard<sup>13</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to such orders see the Sea Fisheries Regulation Act 1966 s 1(2); and para 959 note 26 ante. Before making an order creating a sea fisheries district the Secretary of State or the Welsh Ministers must cause a draft of the order to be published locally and, if any objection is made to the draft order or any of its provisions, must cause such local inquiry to be held as may be required: s 4(1). Due notice of such an inquiry must be given by advertisement or otherwise and, as respects England, if the order to which the inquiry related is to be made, the

report of the person holding the inquiry must be laid before Parliament with the draft of the statutory instrument containing the order: s 4(2). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As respects Wales, the Welsh Ministers must lay a copy of the report before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 'National waters' is not defined in the Sea Fisheries Regulation Act 1966, but is likely to be construed as the parts of the sea falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters; cf the definition of 'inland waters' in the Supreme Court Act 1981 s 22 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 94). See also *Post Office v Estuary Radio Ltd* [1968] 2 QB 740, [1967] 3 All ER 663 at 680-681, CA, per Diplock LJ; and cf the Administration of Justice Act 1956, Sch 1 para 4 (1) (definition of 'inland waters'). See further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 121 et seq.

4 As to territorial waters see para 961 ante.

5 For the meaning of 'United Kingdom' see para 843 note 1 ante.

6 Sea Fisheries Regulation Act 1966 s 1(1)(a) (s 1(1) amended by the Local Government Act 1972 ss 101(8), (9), 272(1), Sch 30; the Local Government Act 1985 s 16, Sch 8 para 19(2); and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 26(1)). If a county, county borough or metropolitan district council to which an application in that behalf has been made by not less than 20 persons, being persons who are inhabitants of the county, county borough or district and who are interested in sea fisheries, refuses to apply to the Secretary of State or the Welsh Ministers for an order creating a sea fisheries district or neglects to apply to the Secretary of State or the Welsh Ministers for such an order within six months from the date of the application, the persons who made the application may, within 12 months from that date, apply to the Secretary of State or the Welsh Ministers for such an order: Sea Fisheries Regulation Act 1966 s 3 (amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 s 16, Sch 8 para 19; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 26(3); and the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 11). Unless the council satisfies the Secretary of State or the Welsh Ministers that such an order should not be made, he or they must proceed as if the application had been made by the council: Sea Fisheries Regulation Act 1966 s 3.

7 le expenses under the Sea Fisheries Regulation Act 1966: s 1(1)(b).

8 Ibid s 1(1)(b), (c) (s 1(1) as amended: see note 6 supra). Orders made or having effect as if made under s 1 (as amended), being of local application, are not noted in this work. As to the powers of local fisheries committees see para 971 et seq post.

Where a proposed sea fisheries district will adjoin or overlap waters under the jurisdiction of the Environment Agency, the Secretary of State or the Welsh Ministers must, by the order defining the limits of the sea fisheries district, draw a line at or near the mouth of every river or stream flowing into the sea or into any estuary within those limits, or, at his or their option, at or near the mouth of any estuary within those limits, and the sea fisheries district does not then extend into that river, stream or estuary above that line; but the order may provide with respect to that river, stream or estuary that the Environment Agency is to have the powers of a local fisheries committee: s 18(1) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I). Where an area is under the jurisdiction of the Environment Agency or of a harbour authority, and an application for the creation of a sea fisheries district comprising that area or any part of it has not been made or has been refused, the Secretary of State or the Welsh Ministers, if he thinks or they think fit, may by order confer on the Environment Agency or the authority the powers of a local fisheries committee with respect to that area and may by subsequent order revoke or vary any such order if the area, or any part of it, is subsequently comprised in a sea fisheries district: Sea Fisheries Regulation Act 1966 s 18(2). The power to make orders under s 18(2) is exercisable by statutory instrument: s 18(2).

The above provisions as originally enacted related to river authorities and their areas. As to the devolution of functions to the Environment Agency see para 847 ante. 'Sea' includes the coast up to high-water mark: s 20(1). 'Harbour authority' means any person or persons being or claiming to be the owners of a harbour or having the duty of improving, managing, maintaining or regulating a harbour: s 20(1). As to harbour authorities generally see PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 619 et seq.

Where by virtue of s 18 (as amended) the Environment Agency or harbour authority has the powers of a local fisheries committee, then subject to the Water Resources Act 1991 s 210(2) (procedure relating to byelaws made by the Environment Agency: see WATER AND WATERWAYS vol 101 (2009) PARA 605 et seq), those powers are exercisable subject to the like conditions as the like powers are exercisable by such a committee, and the provisions of the Sea Fisheries Regulation Act 1966 apply in relation to byelaws made or officers appointed in exercise of any such powers as if the byelaws were made or the officers appointed by a local fisheries

committee: s 18(3) (amended by the Water Act 1989 s 141, Sch 17 para 5(3); the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 16; and the Environment Act 1995 s 105, Sch 15 para 5(3)).

9       le such regulations consistent with the Sea Fisheries Regulation Act 1966.

10       Ibid s 2(5). As to the membership of committees see para 965 post.

11       le made under ibid s 1 (as amended): see the text and notes 1-8 supra.

12       Ibid s 1(1) (as amended: see note 6 supra). As to the annual meeting to be convened by the Secretary of State or the Welsh Ministers see para 973 post.

13       See the Sea Fisheries (Wildlife Conservation) Act 1992 s 1. The Secretary of State and the Welsh Ministers also have such a duty: see para 970 post.

## **UPDATE**

### **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **964-966 Local Fisheries Districts, Committees and Officers**

The Sea Fisheries Regulation Act 1966, which provides for the establishment of sea fisheries districts and local fisheries committees, is repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). The appropriate national authority may by order make such incidental, consequential, supplemental or transitional provision or savings as appear to the authority to be necessary or expedient in consequence of the repeal of the Sea Fisheries Regulation Act 1966: see Marine and Coastal Access Act 2009 s 188 (not yet in force). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

### **964 Local fisheries committees**

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 13--Sea Fisheries (Wildlife Conservation) Act 1992 s 1 amended: Marine and Coastal Access Act 2009 s 11.

Sea Fisheries (Wildlife Conservation) Act 1992 s 1 partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **965. Membership of local fisheries committees.**

A local fisheries committee<sup>1</sup> is a committee of such county, county borough or metropolitan district council or a joint committee of such county, county borough or metropolitan district councils as is determined by the order creating the sea fisheries district<sup>2</sup>. It consists of members appointed by the council or by the constituent councils in proportions determined by the order<sup>3</sup> and additional members (not exceeding the number of members required to be appointed by the council or constituent councils) including one person appointed by the Environment Agency<sup>4</sup> and other persons appointed by the Secretary of State and the Welsh Ministers<sup>5</sup> as being acquainted with the needs and opinions of the fishing interests of that district or persons having knowledge of, or expertise in, marine environmental affairs<sup>6</sup>. The term of office of any member expires not later than the end of the quadrennial period in which he took office, his place being filled by newly appointed members who then come into office<sup>7</sup>.

1 For the powers of local fisheries committees see para 971 et seq post.

2 Sea Fisheries Regulation Act 1966 s 2(1) (amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 s 16, Sch 8 para 19; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 26(2)). See also para 964 note 6 ante. The Local Government Act 1972 s 106 (standing orders: see LOCAL GOVERNMENT vol 69 (2009) PARA 373) applies to local fisheries committees subject to the provisions of the order constituting the committee: see the Sea Fisheries Regulation Act 1966 s 2(6); and the Local Government Act 1972 s 272(1), (2), Sch 30.

3 See para 964 note 2 ante.

4 This provision as originally enacted related to river authorities. As to the devolution of functions to the Environment Agency see para 847 ante. See also para 964 note 8 ante; and WATER AND WATERWAYS vol 100 (2009) PARA 17.

5 As to the Secretary of State and the Welsh Ministers see para 846 ante.

6 Sea Fisheries Regulation Act 1966 s 2(1)(a), (b), (2) (s 2(2) amended by the Environment Act 1995 ss 102(1), (2), 105, Sch 15 para 5(2)). 'Fishing interests' includes all persons interested in fisheries, either as owners of fisheries or interests in them, fishermen, fishing-boat owners, fish curers, fish merchants or otherwise: Sea Fisheries Regulation Act 1966 s 2. In addition, a local fisheries committee may appoint such number of persons with knowledge of or expertise in marine environmental matters as it thinks fit as further members of the committee for those occasions when it is considering any proposed byelaw under the Sea Fisheries Regulation Act 1966 s 5A (as added and amended) (see para 974 post) or any proposed amendment or revocation of such a byelaw: s 2(2A) (added by the Environment Act 1995 s 102(1), (3)). For these purposes, 'marine environmental matters' means: (1) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or (2) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment: Sea Fisheries Regulation Act 1966 s 2(7) (added by the Environment Act 1995 s 102(1)).

7 Sea Fisheries Regulation Act 1966 s 2(3) (substituted by the Sea Fisheries Regulation Act 1966 (Amendment) Order 1973, SI 1973/1610). 'Quadrennial period' means the period of four years commencing with 1 July 1973 and with every fourth anniversary of that day: Sea Fisheries Regulation Act 1966 s 2(3) (as so substituted). A member of a local fisheries committee who at the time of his appointment was a member of the council by whom he was appointed must, upon ceasing to be a member of the council, also cease to be a member of the committee; but for this purpose a member of the council is not deemed to have ceased by reason of retirement to be a member of the council if he has been re-elected a member of the council not later than the day of his retirement: s 2(4).

### **UPDATE**

## **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **964-966 Local Fisheries Districts, Committees and Officers**

The Sea Fisheries Regulation Act 1966, which provides for the establishment of sea fisheries districts and local fisheries committees, is repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). The appropriate national authority may by order make such incidental, consequential, supplemental or transitional provision or savings as appear to the authority to be necessary or expedient in consequence of the repeal of the Sea Fisheries Regulation Act 1966: see Marine and Coastal Access Act 2009 s 188 (not yet in force). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (ii) Administrative Authorities and Finance/B. LOCAL FISHERIES DISTRICTS, COMMITTEES AND OFFICERS/966. Fishery officers of local fisheries committees.

### **966. Fishery officers of local fisheries committees.**

Subject to any restrictions or conditions as to expenditure made by the council or councils by whom a local fisheries committee is appointed<sup>1</sup>, the committee may appoint such fishery officers as it deems expedient for the purpose of enforcing the observance within its district of its byelaws<sup>2</sup>. This does not exempt British sea fishery officers<sup>3</sup> from their statutory duty of enforcing laws and regulations affecting vessels<sup>4</sup> engaged in sea fishing<sup>5</sup>.

<sup>1</sup> Any restrictions must be made before the officer is appointed: *R v Plymouth Corpn* [1896] 1 QB 158, DC. Where more than one council appoints to the committee, the conditions and restrictions can only be imposed by the common agreement of all the councils represented on the committee: *R v North Riding of Yorkshire County Council* [1899] 1 QB 201, DC. As to local fisheries committees and their membership see paras 964-965 ante.

<sup>2</sup> Sea Fisheries Regulation Act 1966 s 10(1). With the consent of the Environment Agency, a local fisheries committee may appoint as an officer of the committee any officer of the Environment Agency, and, with the consent of a local fisheries committee, the Environment Agency may appoint as one of its officers any officer of that committee: see s 10(4). This provision, as originally enacted, related to river authorities. As to the devolution of functions to the Environment Agency see para 847 ante.

<sup>3</sup> As to British sea fishery officers, who are to be distinguished from the fishery officers, see para 1002 post.

4 'Vessel' includes ship, boat, lighter and other craft of any kind, whether stationary or navigated by steam or otherwise: Sea Fisheries Regulation Act 1966 s 20(1). The term also includes hovercraft: see para 956 note 4 ante.

5 Ibid s 10(1).

## **UPDATE**

### **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **964-966 Local Fisheries Districts, Committees and Officers**

The Sea Fisheries Regulation Act 1966, which provides for the establishment of sea fisheries districts and local fisheries committees, is repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). The appropriate national authority may by order make such incidental, consequential, supplemental or transitional provision or savings as appear to the authority to be necessary or expedient in consequence of the repeal of the Sea Fisheries Regulation Act 1966: see Marine and Coastal Access Act 2009 s 188 (not yet in force). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (ii) Administrative Authorities and Finance/B. LOCAL FISHERIES DISTRICTS, COMMITTEES AND OFFICERS/966A. Inshore Fisheries and Conservation Authorities.

### **966A. Inshore Fisheries and Conservation Authorities.**

The following provisions are not yet in force. The Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) provides for the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England.

#### **1. Establishment of inshore fisheries and conservation districts**

The Secretary of State may by order establish inshore fisheries and conservation districts: Marine and Coastal Access Act 2009 s 149(1). An inshore fisheries and conservation district (an 'IFC district') is an area that consists of (1) one or more local authority areas in England that include part of the seashore, and (2) such part of the English inshore region lying seawards

from that part of the seashore as is specified in the order establishing the district: s 149(2). 'Local authority area' means (a) a county, a London borough or a metropolitan district, (b) a non-metropolitan district comprised in an area for which there is no county council, (c) the City of London, or (d) the Isles of Scilly: Marine and Coastal Access Act 2009 s 186(1). 'Seashore' means the shore and bed of the sea: s 186(1). For the meaning of 'sea' and 'English inshore region' see Marine and Coastal Access Act 2009 s 322(1). Before making an order establishing an IFC district the Secretary of State must consult (i) the council for every local authority area that would, if the order were made, fall within the IFC district established by the order, (ii) the Environment Agency, (iii) Natural England, (iv) the Marine Management Organisation, (v) the authority for any existing IFC district that would, if the order were made, adjoin the IFC district established by the order, (vi) the Welsh Ministers, in a case where, if the order were made, the IFC district established by the order would adjoin the Welsh inshore region, and any other person likely to be affected by the making of the order: s 149(3). For the meaning of 'Welsh inshore region' see Marine and Coastal Access Act 2009 s 322(1).

The Secretary of State may amend or revoke an order made under s 149: see Marine and Coastal Access Act 2009 s 152.

## **2. Inshore fisheries and conservation authorities**

There is to be an inshore fisheries and conservation authority (an 'IFC authority') for every IFC district (see PARA 966A.1) established under the Marine and Coastal Access Act 2009 s 149 (see PARA 966A.1): Marine and Coastal Access Act 2009 s 150(1). Any reference in the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) to the authority for an IFC district is a reference to the IFC authority for that district: s 150(2). An authority for an IFC district is (1) a committee of the council for the local authority area falling within the district; (2) where there is more than one local authority area falling within the district, a joint committee of the councils for those local authority areas: s 150(3). For the meaning of 'local authority area' see PARA 966A.1.

Provision is made with respect to the membership and proceedings of IFC authorities: see Marine and Coastal Access Act 2009 s 151.

## **3. Management of inshore fisheries and protection of marine conservation zones**

The authority for an IFC district (see PARA 966A.1) must manage the exploitation of sea fisheries resources in that district: Marine and Coastal Access Act 2009 s 153(1). Any reference in the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) to the 'exploitation' of sea fisheries resources is a reference to any activity relating to the exploitation of such resources, whether carried out for commercial purposes or otherwise, including (1) fishing for, taking, retaining on board, trans-shipping, landing, transporting or storing such resources, (2) selling, displaying, exposing or offering for sale or possessing such resources, and (3) introducing such resources to the sea or cultivating such resources: Marine and Coastal Access Act 2009 s 153(12). For the meaning of 'sea' see Marine and Coastal Access Act 2009 s 322(1). In the Marine and Coastal Access Act 2009 Pt 6 Ch 1 'sea fisheries resources' means any animals or plants, other than fish falling within s 153(11), that habitually live in the sea, including those that are cultivated in the sea: Marine and Coastal Access Act 2009 s 153(10). The fish referred to in s 153(10) are (a) salmon, trout, eels, lampreys, smelt and shad; (b) any other fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn; (c) any freshwater fish; and in s 153(11) 'eels', 'freshwater fish', 'salmon', 'smelt' and 'trout' have the same meanings as in the Salmon and Freshwater Fisheries Act 1975 (see Salmon and Freshwater Fisheries Act 1975 s 41): Marine and Coastal Access Act 2009 s 153(11). In performing its duty under s 153(1), the authority for an IFC district must (i) seek to ensure that the exploitation of sea fisheries resources is carried out in a sustainable way, (ii) seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the

marine environment from, or promote its recovery from, the effects of such exploitation, (iii) take any other steps which in the authority's opinion are necessary or expedient for the purpose of making a contribution to the achievement of sustainable development, and (iv) seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district: s 153(2). 'The marine environment' includes (A) geological or physiographical features of marine or coastal areas; (B) features of archaeological or historic interest in such areas; (C) flora and fauna which are dependent on, or associated with, a marine or coastal environment: Marine and Coastal Access Act 2009 s 186(1). Provision is made with respect to guidance by the Secretary of State: see Marine and Coastal Access Act 2009 s 153(3)-(9).

The authority for an IFC district must seek to ensure that the conservation objectives of any MCZ in the district are furthered: Marine and Coastal Access Act 2009 s 154(1). In s 154 'MCZ' means a marine conservation zone designated by an order under the Marine and Coastal Access Act 2009 s 116 (see WATER AND WATERWAYS vol 100 (2009) PARA 30E.1); and the reference to the conservation objectives of an MCZ is a reference to the conservation objectives stated for the MCZ under the Marine and Coastal Access Act 2009 s 117(2)(b) (see WATER AND WATERWAYS vol 100 (2009) PARA 30E.1): s 154(3) Nothing in s 153(2) is to affect the performance of the duty imposed by s 154: s 154(2).

#### **4. Byelaws**

For the purposes of performing the duty imposed by the Marine and Coastal Access Act 2009 s 153 (see PARA 966A.3) or the duty imposed by the Marine and Coastal Access Act 2009 s 154 (see PARA 966A.3), the authority for an IFC district (see PARA 966A.1) may make byelaws for that district: Marine and Coastal Access Act 2009 s 155(1). Byelaws made under s 155 must be observed within the district for which they are made: s 155(2). A byelaw made under s 155 does not have effect until it is confirmed by the Secretary of State: s 155(3). This is subject to s 157 (emergency byelaws): s 155(3). The Secretary of State may confirm a byelaw without modification or with such modifications as are agreed to by the IFC authority (see PARA 966A.2) that made the byelaw: s 155(4). Before confirming a byelaw, the Secretary of State may cause a local inquiry to be held: s 155(5).

Provision that may be made by a byelaw under s 155 is specified in the Marine and Coastal Access Act 2009 s 156; the provision that may be made includes provision falling within any one or more of the heads set out in (1) s 156(3) (prohibition or restriction of exploitation of sea fisheries resources), (2) s 156(4) (permits), (3) s 156(5) (vessels, methods and gear), (4) s 156(6) (protection of fisheries for shellfish), (5) s 156(7) (monitoring of exploitation of resources); (6) s 156(8) (information).

Further provision is made with respect to byelaws including (a) supplementary provision (see Marine and Coastal Access Act 2009 s 158); (b) power of the Secretary of State to amend or revoke byelaws (see Marine and Coastal Access Act 2009 s 159); (c) the procedure to be followed by an IFC authority when making byelaws (see Marine and Coastal Access Act 2009 s 160); (d) inquiries (see Marine and Coastal Access Act 2009 s 161); and (e) evidence of byelaws (see Marine and Coastal Access Act 2009 s 162).

#### **5. Offences**

A person who contravenes any byelaw made under the Marine and Coastal Access Act 2009 s 155 (see PARA 966A.4) is guilty of an offence under the Marine and Coastal Access Act 2009 s 163: s 163(1). In s 163 'contravention' includes failure to comply; and 'contravene' is to be read accordingly: s 163(5). Where any vessel is used in contravention of any byelaw made under s 155, the master, the owner and the charterer (if any) are each guilty of an offence under s 163: s 163(2). 'Vessel' includes any ship or boat or any other description of vessel used in navigation; and 'master' includes, in relation to any vessel, the person for the time being in



command or charge of the vessel: Marine and Coastal Access Act 2009 s 186(1). A person who is guilty of an offence under s 163 is liable on summary conviction to a fine not exceeding £50,000: s 163(3). Proceedings for an offence under s 163 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of England and Wales: s 163(4).

The Marine and Coastal Access Act 2009 s 164 applies where a person is convicted of an offence under s 163: s 164(1). The court by which the person is convicted may order the forfeiture of (1) any fishing gear used in the commission of the offence; (2) any sea fisheries resources in respect of which the offence was committed: s 164(2). 'Sea fisheries resources' has the meaning given by the Marine and Coastal Access Act 2009 s 153 (see PARA 966A.3): Marine and Coastal Access Act 2009 s 186(1). The power conferred by s 164(2) to order the forfeiture of any sea fisheries resources includes power to order the forfeiture of any container in which the resources are being kept: s 164(3). The court may, instead of ordering the forfeiture of any fishing gear or any sea fisheries resources, order the person to pay a sum of money representing the value of the fishing gear or resources: s 164(4). In a case where the offence involved the breach of a condition of an IFC authority permit, the court may (a) suspend the permit, or (b) disqualify the person from holding or obtaining any IFC authority permit relating to any activity to which that permit related, for such period as the court thinks fit: s 164(5). In s 164(5) 'IFC authority permit' means a permit granted by an IFC authority (see PARA 966A.2): s 164(6).

## **6. Enforcement**

An IFC authority (see PARA 966A.2) may appoint persons to be inshore fisheries and conservation officers ('IFC officers'): Marine and Coastal Access Act 2009 s 165(1). The carrying out of any functions of an IFC officer by a person appointed by an IFC authority under s 165 is subject to any limitations specified by the authority in relation to that person: s 165(2). In the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) any reference to the IFC district for which an officer has been appointed is a reference to the district of the IFC authority that appointed the officer: s 165(3). As to IFC districts see PARA 966A.1.

The powers of IFC officers are set out: see Marine and Coastal Access Act 2009 s 166. As to enforcement powers under the Marine and Coastal Access Act 2009 generally see Marine and Coastal Access Act 2009 Pt 8 (ss 235-295).

## **7. Power to delegate functions**

The authority for an IFC district (see PARA 966A.1) may, with the approval of the Secretary of State, enter into an agreement with an eligible body (see Marine and Coastal Access Act 2009 s 168) authorising the eligible body to perform any function of the IFC authority (see PARA 966A.2) (1) either in relation to the district or in relation to specified parts of that district; (2) subject to head (1), either generally or in specified cases: Marine and Coastal Access Act 2009 s 167(1). 'Specified' means specified in the agreement: s 167(1). For the purposes of s 167 and ss 168-171 (a) any reference to a function of an IFC authority includes a reference to a function exercisable by a person authorised, appointed or employed by the IFC authority; (b) any reference to an agreement is to an agreement under s 167: s 167(2). The Secretary of State's approval may be given (i) in relation to a particular agreement or in relation to a description of agreements; (ii) unconditionally or subject to conditions specified in the approval: s 167(3). An agreement under s 167 may not authorise an eligible body to perform any of the following functions (A) any function whose performance by the body would be incompatible with the purposes for which the body was established; (B) functions under the Marine and Coastal Access Act 2009 s 176 (accounts: see PARA 966A.8): s 167(4). An agreement under s 167 does not prevent the IFC authority from performing a function to which the agreement relates: s

167(5). The maximum period for which an agreement under s 167 may authorise an eligible body to perform a function is twenty years: s 167(6).

Provision is made for the review, variation and cancellation of agreements made between IFC authorities and eligible bodies: see Marine and Coastal Access Act 2009 s 169. Particular powers with respect to agreements under s 167 are set out: see Marine and Coastal Access Act 2009 s 170. Supplementary provision with respect to agreements under s 167 is made: see Marine and Coastal Access Act 2009 s 171.

## **8. Other powers and duties of IFC authorities**

An IFC authority (see PARA 966A.2) may take such steps as it considers necessary or expedient for or in connection with the development of any fishery for any sea fisheries resources: see Marine and Coastal Access Act 2009 s 172. 'Sea fisheries resources' has the meaning given by the Marine and Coastal Access Act 2009 s 153 (see PARA 966A.3): Marine and Coastal Access Act 2009 s 186(1).

An IFC authority may enter into arrangements with another person or body for the provision by the authority of services that are required by the person or body in connection with the exercise of the person's or body's functions: see Marine and Coastal Access Act 2009 s 173.

The authority for an IFC district (see PARA 966A.1) must take such steps as it considers appropriate to co-operate with (1) the authority for every IFC district adjoining that district, (2) the Welsh Ministers, in a case where that district adjoins the Welsh inshore region, and (3) any other public authority that exercises functions relating to (a) the regulation of activities carried on in any part of the sea lying within that district, or (b) enforcement in that part of the sea: Marine and Coastal Access Act 2009 s 174. For the meaning of 'Welsh inshore region', 'public authority' and 'sea' see Marine and Coastal Access Act 2009 s 322(1).

Every IFC authority must collect such statistics relating to the exploitation of sea fisheries resources within its district as it considers necessary for the purposes of performing its duty under the Marine and Coastal Access Act 2009 s 153 (see PARA 966A.3): Marine and Coastal Access Act 2009 s 175(1). Any reference in the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) to the exploitation of sea fisheries resources is to be read in accordance with s 153(12) (see PARA 966A.3): Marine and Coastal Access Act 2009 s 186(2). Every IFC authority must provide the Secretary of State with such information as the Secretary of State may reasonably require about (i) proceedings of the IFC authority; (ii) sea fisheries within the authority's district; (iii) the effect of the exploitation of sea fisheries resources in that district on the marine environment: s 175(2). For the meaning of 'the marine environment' see PARA 966A.3.

An IFC authority must keep proper accounts and proper records in relation to the accounts: Marine and Coastal Access Act 2009 s 176(1). The accounts of an IFC authority that by virtue of the Marine and Coastal Access Act 2009 s 150(3) (see PARA 966A.2) is a joint committee of councils must be made up yearly to 31 March: s 176(2).

Before the beginning of each financial year every IFC authority must make and publish a plan setting out the authority's main objectives and priorities for the year: see Marine and Coastal Access Act 2009 s 177. For the meaning of 'financial year' see Marine and Coastal Access Act 2009 s 322(1).

As soon as is reasonably practicable after the end of each financial year, every IFC authority must prepare a report on its activities in that year: see Marine and Coastal Access Act 2009 s 178.

An IFC authority may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of its other functions: Marine and Coastal Access Act 2009 s 179(1). In particular it may (A) acquire or dispose of land or other property;

(b) enter into arrangements with other IFC authorities for the establishment of a body to co-ordinate the activities of those authorities which are party to the arrangements: Marine and Coastal Access Act 2009 s 179(2). But an IFC authority has no power to borrow money: s 179(3).

## **9. Miscellaneous and supplemental**

The expenses incurred by the authority for an IFC district (see PARA 966A.1) are to be defrayed by the relevant council or councils: Marine and Coastal Access Act 2009 s 180(1). 'Relevant council', in relation to an IFC district, means the council for a local authority area falling within the district: Marine and Coastal Access Act 2009 s 186(1). For the meaning of 'local authority area' see PARA 966A.1. Where there is more than one relevant council for an IFC district, each council must pay such portion of the expenses incurred by the authority for the district as is specified in, or determined in accordance with, the order establishing the district: s 180(2). The order may provide for the portion of the expenses payable by a relevant council to be calculated by reference to any circumstances whatsoever: s 180(2). Accordingly, the Local Government Act 1972 s 103 (expenses of joint committees) does not apply in relation to an IFC authority (see PARA 966A.2): Marine and Coastal Access Act 2009 s 180(3). The total amount of an IFC authority's expenses to be defrayed under s 180(1) for any particular financial year may be vetoed by a vote of those members of the IFC authority who are members of a relevant council: s 180(4). For the meaning of 'financial year' see Marine and Coastal Access Act 2009 s 322(1).

An IFC authority is capable (despite being an unincorporated body) of (1) making contracts; (2) bringing proceedings under the Marine and Coastal Access Act 2009 in its own name; (3) bringing or defending any other proceedings in its own name: Marine and Coastal Access Act 2009 s 181.

No person who is a member or employee of an IFC authority and who is acting in good faith is to be liable for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the authority's functions: see Marine and Coastal Access Act 2009 s 182.

As soon as is reasonably practicable after the end of every relevant four-year period, the Secretary of State must lay before Parliament a report about the conduct and operation of the authorities for any IFC districts in existence during the whole or part of that period: see Marine and Coastal Access Act 2009 s 183.

Provision is made with respect to application of the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (ss 149-186) to the Crown: see Marine and Coastal Access Act 2009 s 185.

## **UPDATE**

### **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **964-966 Local Fisheries Districts, Committees and Officers**

The Sea Fisheries Regulation Act 1966, which provides for the establishment of sea fisheries districts and local fisheries committees, is repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). The appropriate national authority may by order make such incidental, consequential, supplemental or transitional provision or savings as appear to the authority to be necessary or expedient in consequence of the repeal of the Sea Fisheries Regulation Act 1966: see Marine and Coastal Access Act 2009 s 188 (not yet in force). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (ii) Administrative Authorities and Finance/B. LOCAL FISHERIES DISTRICTS, COMMITTEES AND OFFICERS/966B. Inshore fisheries in Wales.

### **966B. Inshore fisheries in Wales.**

The following provisions are in force unless otherwise stated. The Marine and Coastal Access Act 2009 Pt 6 Ch 3 (ss 189-193) makes provision for inshore fisheries in Wales.

Subject to the Marine and Coastal Access Act 2009 s 189(2), the Welsh Ministers may by order make any provision in relation to Wales which the authority for an IFC district (see PARA 966A.1) may make for that district by a byelaw made under the Marine and Coastal Access Act 2009 s 155 (see PARA 966A.4): Marine and Coastal Access Act 2009 s 189(1) (not yet in force). 'Wales' has the same meaning as in the Government of Wales Act 2006: Marine and Coastal Access Act 2009 s 189(3) (not yet in force). To the extent that the Welsh Ministers have power, apart from s 189, to make provision of the kind referred to in s 189(1) (whether by order or otherwise), s 189(1) does not apply: s 189(2) (not yet in force).

A person who contravenes any provision of an order made under s 189 is guilty of an offence under the Marine and Coastal Access Act 2009 s 190: s 190(1). In s 190 'contravention' includes failure to comply; and 'contravene' is to be read accordingly: s 190(7). Where any vessel is used in contravention of any provision of an order made under s 189, the master, the owner and the charterer (if any) are each guilty of an offence under s 190: s 190(2). A person who is guilty of an offence under s 190 is liable on summary conviction to a fine not exceeding £50,000: s 190(3). Proceedings for an offence under s 190 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of England and Wales: s 190(4). No contravention by the Crown of s 190 is to make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention: s 190(5). Despite s 190(5), s 190 applies to persons in the public service of the Crown as it applies to other persons: s 190(6).

The Marine and Coastal Access Act 2009 s 191 applies where a person is convicted of an offence under s 190: s 191(1). The court by which the person is convicted may order the forfeiture of (1) any fishing gear used in the commission of the offence; (2) any sea fisheries resources in respect of which the offence was committed: s 190(2). In s 190 'sea fisheries resources' has the same meaning as in the Marine and Coastal Access Act 2009 Pt 6 Ch 1 (see s 153 and PARA 966A.3): s 190(6). The power conferred by s 190(2) to order the forfeiture of any sea fisheries resources includes power to order the forfeiture of any container in which the resources are being kept: s 190(3). The court may, instead of ordering the forfeiture of any

fishing gear or any sea fisheries resources, order the person to pay a sum of money representing the value of the fishing gear or resources: s 190(4). In a case where the offence involved the breach of a condition of a permit granted by the Welsh Ministers, the court may (a) suspend the permit, or (b) disqualify the person from holding or obtaining any such permit relating to any activity to which that permit related, for such period as the court thinks fit: s 190(5).

The Welsh Ministers may (i) enter into arrangements with any person who is entitled to a right of regulating a fishery conferred by an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (see PARA 1032) for the provision of services that are required by the person in connection with the enforcement of any provision made by or under the order; (ii) enter into arrangements with (A) any person who is entitled to a right of several fishery conferred by an order under the Sea Fisheries (Shellfish) Act 1967 s 1, or (B) any person who owns a private shellfish bed (within the meaning of the Sea Fisheries (Shellfish) Act 1967), for the provision of services that are required by the person in connection with the enforcement of any provision of, or any rights conferred by, the Sea Fisheries (Shellfish) Act 1967 s 7 (see PARAS 1037, 1038): Marine and Coastal Access Act 2009 s 192(1). The terms and conditions upon which arrangements under s 192(1) are made may include provision for the making of payments to the Welsh Ministers by the person or body to whom the services are provided: s 192(2).

## **UPDATE**

### **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **964-966 Local Fisheries Districts, Committees and Officers**

The Sea Fisheries Regulation Act 1966, which provides for the establishment of sea fisheries districts and local fisheries committees, is repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). The appropriate national authority may by order make such incidental, consequential, supplemental or transitional provision or savings as appear to the authority to be necessary or expedient in consequence of the repeal of the Sea Fisheries Regulation Act 1966: see Marine and Coastal Access Act 2009 s 188 (not yet in force). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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## **C. FINANCE**

### **967. Expenses of local fisheries committees.**

The expenses of a local fisheries committee<sup>1</sup>, so far as payable by a county or metropolitan district council, are according as the order constituting the committee provides, general or special expenses of the council and if special expenses are chargeable on such part only of the council's area as may be directed by the order<sup>2</sup>.

A local fisheries committee may repay to any member of the committee the amount of any travelling expenses necessarily incurred by him in attending any meeting of the committee or any meeting convened by the Secretary of State or the Welsh Ministers<sup>3</sup> under the statutory powers<sup>4</sup> or in carrying out any inspection necessary for the exercise of the committee's powers, or the discharge of its duties<sup>5</sup>.

Provision is made for the payment of expenses which a local fisheries committee is required by the Secretary of State or the Welsh Ministers to incur in the collection of statistics<sup>6</sup>.

A county, county borough or metropolitan district council may pay or contribute to expenses incurred by the Environment Agency in exercising functions of a local fisheries committee<sup>7</sup>.

The accounts of a local fisheries committee which by statute<sup>8</sup> is a joint committee of councils are to be made up yearly to 31 March<sup>9</sup>.

1 As to local fisheries committees and their membership see paras 964-965 ante.

2 Sea Fisheries Regulation Act 1966 s 17(1) (substituted by the Local Government Act 1985 s 16, Sch 8 para 19). As to local government finance see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 514 et seq.

3 As to the Secretary of State and the Welsh Ministers see para 846 ante.

4 Ie under the powers conferred by the Sea Fisheries Regulation Act 1966 s 15: see para 973 post.

5 Ibid s 16. Any such amount repaid by the committee to any of its members is to be treated as part of the expenses of the committee: s 16. As to allowances for members of local authorities and expenses of official visits see the Local Government Act 1972 ss 173-178 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 170 et seq.

6 Sea Fisheries Regulation Act 1966 s 17(2). See also para 973 text to note 13 post.

7 See ibid s 19 (amended by the Local Government Act 1985 s 16, Sch 8 para 19; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 26(4)). The provisions of the Sea Fisheries Regulation Act 1966 s 19, as originally enacted, related to river authorities. As to the devolution of functions to the Environment Agency see para 847 ante. As to the functions of local fisheries committees which may be exercised by the Environment Agency see para 964 note 8 ante.

8 Ie by virtue of ibid s 2(1) (as amended): see para 965 ante.

9 Ibid s 17(3).

## **UPDATE**

### **964-967 Administrative Authorities and Finance**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 3, 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **967 Expenses of local fisheries committees**

TEXT AND NOTES--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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## **968. Financial assistance.**

The special legislation dealing with the provision of financial assistance to those engaged in the sea fish industry is dealt with elsewhere in this title<sup>1</sup>.

The Secretary of State or the Welsh Ministers<sup>2</sup> may assist a local authority or other non-profit-making body with grants and loans in connection with expenses incurred in providing or repairing harbours and harbour works if he is or they are satisfied that the assistance will promote the maintenance or development of the fishing industry<sup>3</sup>.

1 See paras 1066-1069 post.

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 See the Fisheries Act 1955 s 2(1), (2). See further PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 683.

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## **(iii) Powers of Administrative Authorities**

### ***A. THE SECRETARY OF STATE AND THE WELSH MINISTERS***

## **969. Regulation of the landing of foreign-caught fish.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order<sup>2</sup> regulate the landing in England, Wales and Northern Ireland of sea fish<sup>3</sup> which have not been: (1) taken by relevant British fishing boats<sup>4</sup> registered in the United Kingdom<sup>5</sup>, the Isle of Man or any of the Channel Islands<sup>6</sup>;

and (2) brought to land in England, Wales and Northern Ireland without having been previously landed outside England, Wales and Northern Ireland<sup>7</sup>. Such an order may contain such provisions as appear to the Secretary of State or the Welsh Ministers to be necessary for securing the due operation and enforcement of the scheme of regulation contained in the order<sup>8</sup>.

Such an order regulating the landing of sea fish must not be made unless it appears to the Secretary of State or the Welsh Ministers that there have been or are being taken all such steps, if any, as are practicable and necessary for the efficient organisation of that branch of the sea fish industry of England, Wales and Northern Ireland or of that branch of the fish curing industry in England, Wales and Northern Ireland in whose interests the order is proposed to be made<sup>9</sup>. The Secretary of State or the Welsh Ministers may not make the order unless he is or they are satisfied that it is not at variance with any treaty, convention or agreement of the time being in force between Her Majesty and any foreign power or between Her Majesty's government in the United Kingdom and the government of any other country<sup>10</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante. Provision is made for the payment of expenses incurred by the Secretary of State or the Welsh Ministers under the Sea Fish (Conservation) Act 1967 s 8 (as amended): see s 19(1).

2 This power is exercisable by statutory instrument which, in relation to England, must be laid before Parliament, and may be varied or revoked by subsequent order: see the Sea Fish (Conservation) Act 1967 s 20(1)-(3); and para 959 notes 26-28 ante. A statutory instrument containing an order under s 8 (as amended) ceases to have effect on the expiration of a period of 28 days beginning with the date on which it is made, unless before the expiration of that period it has been approved by a resolution of each House of Parliament; but this is without prejudice to anything previously done under the instrument or to the making of a new statutory instrument: s 20(4). In reckoning this period no account may be taken of any time during which Parliament is dissolved or prorogued, or during which the House of Commons is adjourned for more than four days: s 20(4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As soon as may be after the making of an order under the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended) (see para 988 post), s 3 (as amended) (see para 980 post), s 6 (as amended) (see para 992 post) or s 8 (as amended) or an order under s 15 (as amended) (see para 1006 post) relating to s 1 (as substituted and amended) or s 3 (as amended) or to an order under s 1 (as substituted and amended) or s 3 (as amended), the authority making the order must, in such manner as it thinks best for informing persons concerned, publish a notice stating that the order has been made and specifying the place where copies may be purchased: s 20(7). As to the order, presently suspended, which has effect as if made under these provisions see para 991 post.

3 'Sea fish' means fish, whether fresh or cured, of any kind found in the sea, including shellfish, and parts of any such fish but (except in *ibid* ss 4, 4A (as added), 5, 6, 7, 9) does not include salmon or migratory trout: s 22(1) (amended by the Fisheries Act 1981 s 21(2)(c)). 'Shellfish' includes crustaceans and molluscs of any kind and any spat or spawn of shellfish: Sea Fish (Conservation) Act 1967 s 22(1). 'Migratory trout' means trout which migrate to and from the sea; and 'salmon' includes any fish of the salmon species: s 22(1).

4 'Relevant British fishing boat' means a British fishing boat which is not a Scottish fishing boat; and 'Scottish fishing boat' means a fishing vessel which is registered in the register maintained under the Merchant Shipping Act 1995 s 8 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging: Sea Fish (Conservation) Act 1967 s 22(1) (definitions added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (11)). 'Fishing boat' means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing or (except in the Sea Fish (Conservation) Act 1967 s 5 and s 15 (as amended) in so far as that provision applies to s 5 (as amended) (see paras 989, 1006 post) and s 6 (as amended) (see paras 992, 1006 post) and orders made under ss 5, 6 (both as amended)) the sea fishing service: s 22(1). 'Vessel' includes any ship or boat or any other description of vessel used in navigation: s 22(1).

5 For the meaning of 'United Kingdom' see para 843 note 1 ante.

6 The landing of sea fish taken by a relevant British fishing boat registered in the Isle of Man or any of the Channel Islands is not to be exempt from the operation of an order under the Sea Fish (Conservation) Act 1967 s 8 (as amended), unless the master is either a British subject or a citizen of the Republic of Ireland and the second hand is also either a British subject or such a citizen: s 8(1) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2), (8)).



7 Sea Fish (Conservation) Act 1967 s 8(1) (as amended: see note 6 supra). Without prejudice to the provisions set out in the text, an order under s 8 (as amended) may determine, for any period specified in the order, the descriptions of such sea fish which may be landed in England, Wales and Northern Ireland and the quantity of such sea fish, or of any description of them, which may be so landed: s 8(1) (as so amended).

Section 8 (as amended), any other enactment which provides for regulating the catching or landing of sea fish, and any order or byelaw made at any time under any such enactment, do not restrict the carrying on of any operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, nor do they restrict the landing of sea fish caught in the course of any such operations: s 9(4), (5). The provisions of s 9(4) have effect in addition to, and not in derogation of, s 9(1)-(3) (s 9(1) as amended) (see paras 988, 989 note 6 post) and any express saving or exemption contained in such other enactment or in any order or byelaw made under an enactment to which s 9(4) applies: s 9(6). For this purpose, 'sea fish' includes salmon and migratory trout: s 9(7). As to further restrictions on landing and sale see para 988 post.

8 Ibid s 8(2).

9 Ibid s 8(3) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (8)).

10 Sea Fish (Conservation) Act 1967 s 8(4) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (8)). As to the conventions see para 960 ante. In deciding whether to make an order under the Sea Fish (Conservation) Act 1967 s 8 (as amended), and in settling the terms of any such order, the Secretary of State must have regard, among other considerations, to the interests of consumers of the sea fish to which the order relates (including persons who purchase such fish for the purpose of subjecting them to any treatment or process of manufacture) and to the effect which the regulation of the landing of such sea fish in England, Wales and Northern Ireland is likely to have upon commercial relations between the United Kingdom and other countries: s 8(4) (as so amended).

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **969 Regulation of the landing of foreign-caught fish**

NOTE 7--The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1)-(4) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

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### **970. Miscellaneous powers and duties of the Secretary of State and the Welsh Ministers.**

The Secretary of State and the Welsh Ministers<sup>1</sup> have numerous powers in relation to sea fisheries<sup>2</sup>. They include the power to create sea fisheries districts and constitute local fisheries committees for the regulation of sea fisheries within those districts<sup>3</sup>; to confer the powers of such a committee on a harbour authority or the Environment Agency<sup>4</sup>; to appoint certain members of such committees<sup>5</sup>; to require such committees to collect and furnish statistics and returns<sup>6</sup>; to convene annual meetings of committee representatives<sup>7</sup>; and to regulate the making of<sup>8</sup>, and to confirm and revoke, byelaws of such committees including byelaws made for marine environmental purposes<sup>9</sup>.

They may make orders for the establishment or improvement or for the maintenance and regulation of oyster, mussel or cockle fisheries<sup>10</sup>; prohibit the deposit of shellfish in designated waters<sup>11</sup>; prohibit the importation of shellfish into designated areas<sup>12</sup>; constitute oyster districts<sup>13</sup>; regulate lobster and crab fishing<sup>14</sup>; and make grants for the restoration of oyster, mussel and cockle fisheries<sup>15</sup>.

They also have power to regulate the landing of foreign-caught sea fish<sup>16</sup>; to regulate nets and other fishing gear<sup>17</sup>; to prescribe size limits for fish for certain purposes<sup>18</sup>; to regulate fishing for sea fish<sup>19</sup>; to regulate the conduct and safeguarding of fishing and ancillary operations<sup>20</sup>; to prohibit the landing of sea fish caught in certain areas<sup>21</sup>; to designate foreign countries whose fishing boats may fish in the outer belt of British fishery limits<sup>22</sup>; to regulate the stowage of gear<sup>23</sup>; to specify foreign sea fishery officers appointed to enforce conventions<sup>24</sup>; to confer powers on British sea fishery officers<sup>25</sup>; and to take, or concur or assist in taking, measures for the increase or improvement of marine resources as may be required for giving effect to any convention or agreement between the government of the United Kingdom and of any other country<sup>26</sup>.

The Secretary of State and the Welsh Ministers also have statutory powers relating to the sea fish industry<sup>27</sup>.

In discharging any functions<sup>28</sup>, the Secretary of State and the Welsh Ministers must, so far as is consistent with the proper and efficient discharge of those functions, have regard to the conservation of marine flora and fauna and endeavour to achieve a reasonable balance between that consideration and any other considerations to which he is or they are required to have regard<sup>29</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 The Secretary of State and the Welsh Ministers also have maritime functions in relation to the deposit of substances and articles at sea: see the Food and Environment Protection Act 1985 Pt II (ss 5-15) (as amended); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 525 et seq.

3 See para 964 ante.

4 See para 964 note 8 ante.

5 See para 965 ante.

6 See para 973 post.

7 See para 973 post.

8 See para 974 post.

9 See para 974 post.

10 See para 1032 post.

11 See para 1041 post.

12 See para 1042 post.

- 13 See para 1044 note 7 post.
- 14 See paras 1045-1046 post.
- 15 See para 1052 post.
- 16 See para 969 ante.
- 17 See para 980 post.
- 18 See para 988 post.
- 19 See para 989 post.
- 20 See eg paras 988-990 post.
- 21 See para 992 post.
- 22 See para 998 post.
- 23 See para 998 post.
- 24 See para 1003 post.
- 25 See para 1006 post.
- 26 See the Sea Fish (Conservation) Act 1967 s 10.
- 27 See para 1054 et seq post.
- 28 le conferred or imposed by any enactments for the time being in force relating to sea fishing, including any enactment relating to fishing in the sea for shellfish, salmon or migratory trout: Sea Fisheries (Wildlife Conservation) Act 1992 s 1(2).
- 29 Ibid s 1(1), (2).

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **970 Miscellaneous powers and duties of the Secretary of State and the Welsh Ministers**

TEXT AND NOTES 28, 29--Sea Fisheries (Wildlife Conservation) Act 1992 s 1(1), (2) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

In relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea, any competent authority having functions relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of EC Council Directive 79/409 on the conservation of wild birds and EC Council Directive 92/43 on the conservation of natural habitats and of wild flora and fauna: see the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007,

SI 2007/1842, reg 6. As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

NOTE 29--Sea Fisheries (Wildlife Conservation) Act 1992 s 1(1) amended: Marine and Coastal Access Act 2009 s 11.

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## **B. LOCAL FISHERIES COMMITTEES**

### **971. Stocking public fisheries.**

A local fisheries committee<sup>1</sup> has power to stock or restock any public fishery for shellfish<sup>2</sup> and for that purpose to incur such expense as may be sanctioned by the Secretary of State or the Welsh Ministers<sup>3</sup>.

1 As to local fisheries committees and their membership see paras 964-965 ante.

2 'Shellfish' includes crustaceans and molluscs of any kind: Sea Fisheries Regulation Act 1966 s 20(1).

3 Ibid s 13(1). As to the Secretary of State and the Welsh Ministers see para 846 ante.

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-973 Local Fisheries Committees**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation

authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iii) Powers of Administrative Authorities/B. LOCAL FISHERIES COMMITTEES/972. Destruction of predatory fish, animals and birds.

## **972. Destruction of predatory fish, animals and birds.**

With the approval of the Secretary of State or the Welsh Ministers<sup>1</sup> and subject to such conditions as he or they may impose, a local fisheries committee<sup>2</sup> may undertake or cause to be undertaken the destruction of predatory fish, predatory marine animals and predatory birds and their eggs, if and so far as such destruction appears to it to be desirable for the preservation and improvement of the fisheries within its district, and is not otherwise illegal<sup>3</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to local fisheries committees and their membership see paras 964-965 ante.

3 Sea Fisheries Regulation Act 1966 s 13(2). This provision specifies that the act of destruction may not be illegal under any Act except the Sea Fish Industry Act 1938. The Sea Fish Industry Act 1938 has been largely repealed, none of its provisions relating to sea fisheries now having effect. See also the Wildlife and Countryside Act 1981 s 4(3)(c) (as amended); and ANIMALS vol 2 (2008) PARA 998.

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-973 Local Fisheries Committees**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation

authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iii) Powers of Administrative Authorities/B. LOCAL FISHERIES COMMITTEES/973. Miscellaneous powers and duties of local fisheries committees.

### **973. Miscellaneous powers and duties of local fisheries committees.**

A local fisheries committee<sup>1</sup> may contribute to the cost of executing works for the maintenance or improvement of any small harbour<sup>2</sup> situated wholly or partly in its district, being a harbour as to which the Secretary of State is or the Welsh Ministers<sup>3</sup> are satisfied that it is principally used by persons engaged in the sea fishing industry<sup>4</sup>. It may also contribute or undertake to contribute to the expenses of a harbour authority<sup>5</sup> for a harbour<sup>6</sup> situated wholly or partly in the committee's district<sup>7</sup>. A committee may be authorised by directions to institute proceedings for offences in connection with the illegal discharge of oil committed in waters within its district<sup>8</sup>. Any local fisheries committee may, within its district, enforce any Act relating to sea fisheries<sup>9</sup>. In addition a local fisheries committee is empowered to take proceedings in respect of any contravention of fish size orders<sup>10</sup> or orders regulating nets and gear<sup>11</sup> occurring within its district<sup>12</sup>.

Every local fisheries committee must collect such statistics relating to the sea fisheries within its district, and make such returns to the Secretary of State or the Welsh Ministers, as the case may be, as to the committee's proceedings and as to such sea fisheries, as may be required<sup>13</sup>. At least once in every year the Secretary of State or the Welsh Ministers must convene a meeting for consultative purposes composed of not less than one representative selected by each of the local fisheries committees<sup>14</sup>.

In discharging any functions conferred or imposed on them<sup>15</sup>, local fisheries committees must, so far as is consistent with the proper and efficient discharge of those functions, have regard to the conservation of marine flora and fauna and endeavour to achieve a reasonable balance between that consideration and any other considerations to which they are required to have regard<sup>16</sup>.

1 As to local fisheries committees and their membership see paras 964-965 ante.

2 'Harbour' in this context includes any haven, cove or other landing place: Sea Fisheries Regulation Act 1966 s 13(4). 'Works' includes slipways, capstans and other works facilitating the landing, launching or beaching of vessels in any harbour: s 13(4). For the meaning of 'vessel' see para 966 note 4 ante.

3 As to the Secretary of State and the Welsh Ministers see para 846 ante.

4 Sea Fisheries Regulation Act 1966 s 13(4).

5 I.e a harbour authority constituted under the Fishery Harbours Act 1915 (repealed). See now the Harbours Act 1964; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 619 et seq. For the meaning of 'harbour authority' see para 964 note 8 ante.

6 See PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 611.

7 Sea Fisheries Regulation Act 1966 s 13(3).

8 See the Prevention of Oil Pollution Act 1971 s 19(1), (2), (6); and paras 918, 962 ante.

9 Sea Fisheries Regulation Act 1966 s 13(5) (amended by the Sea Fisheries Act 1968 s 22(1), (2), Sch 1 para 37, Sch 2 Pt II).

10 Ie any contravention of the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended) or s 2 (as amended): see para 988 post.

11 Ie any contravention of *ibid* s 3 (as amended): see para 980 et seq post.

12 *Ibid* s 13(1). For the purposes of this provision, in so far as it applies to a contravention of s 1 (as substituted and amended) or s 2 (as amended), the district of a local fisheries committee is deemed to extend throughout the area of any council liable to pay, or to contribute to the payment of, the committee's expenses, except that the powers conferred by s 13(1) on the committee are not exercisable in respect of any matter arising within the limits of any market under council control: s 13(2). See further *MARKETS, FAIRS AND STREET TRADING*.

13 Sea Fisheries Regulation Act 1966 s 14. As to expenses incurred in the collection of statistics see para 967 ante.

14 See *ibid* s 15.

15 Ie conferred or imposed by any enactments for the time being in force relating to sea fishing, including any enactment relating to fishing in the sea for shellfish, salmon or migratory trout: Sea Fisheries (Wildlife Conservation) Act 1992 s 1(2).

16 *Ibid* s 1(1), (2).

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA* 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see *LOCAL GOVERNMENT* vol 69 (2009) *PARA* 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-973 Local Fisheries Committees**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see *PARA* 966A. For provision as to inshore fisheries in Wales see *PARA* 966B.

### **973 Miscellaneous powers and duties of local fisheries committees**

TEXT AND NOTE 12--Sea Fish (Conservation) Act 1967 s 13 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTES 15, 16--Sea Fisheries (Wildlife Conservation) Act 1992 s 1(1), (2) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTE 16--Sea Fisheries (Wildlife Conservation) Act 1992 s 1(1) amended: Marine and Coastal Access Act 2009 s 11.

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## **C. BYELAWS**

### **974. Making of byelaws.**

Subject to such regulations<sup>1</sup> as may be made by the Secretary of State or the Welsh Ministers<sup>2</sup>, a local fisheries committee may make byelaws<sup>3</sup> to be observed within its district<sup>4</sup>. Any such byelaw may provide for its application either to the whole or any specified part or parts of the district for which it is made and either during the whole or any specified part or parts of the year<sup>5</sup>. Any power to make byelaws<sup>6</sup> may be exercised for marine environmental purposes<sup>7</sup>.

A byelaw is not valid until confirmed by the Secretary of State or the Welsh Ministers<sup>8</sup> who may cause such local inquiry as he thinks or they think fit regarding the byelaw to be held before confirming it; the Secretary of State or the Welsh Ministers may in any case confirm the byelaw either without modification or subject to such modifications as may be assented to by the committee which made the byelaw<sup>9</sup>. The Secretary of State or the Welsh Ministers may also revoke a byelaw made by a committee if it appears to be necessary or desirable to do so for the maintenance or improvement of fisheries or for marine environmental purposes<sup>10</sup>.

1 See the Sea Fisheries (Byelaws) Regulations 1985, SI 1985/1785. The regulations are made by statutory instrument: see the Sea Fisheries Regulation Act 1966 s 5(1).

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 As to the purposes for which byelaws may be made see para 975 post. As to local fisheries committees and their membership see paras 964-965 ante. Notice of the intention to propose the making of a byelaw at a meeting of a local fisheries committee must be given in writing not less than 14 days before the date of the meeting to each member of the committee and to the Secretary of State or the Welsh Ministers: Sea Fisheries (Byelaws) Regulations 1985, SI 1985/1785, regs 2, 4(1). Such notice must include a draft of the byelaw: reg 4(2). As to the lawfulness of byelaws made see *Thomas v South Wales Sea Fisheries Committee* [2000] COD 434, [2000] All ER (D) 940. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

4 Sea Fisheries Regulation Act 1966 s 5(1). As to restrictions on the power to make byelaws see para 977 post. In an area for which no local fisheries committee has been established, the Environment Agency or harbour authority may be authorised to exercise the functions of a local fisheries committee: see para 964 note 8 ante.

The power of a local fisheries committee to make byelaws under s 5 (as amended) is exercisable, with the consent of the Environment Agency for the purposes of protecting salmon and of preventing any interference with their migration and is so exercisable as if the references in s 5 (as amended) to sea fish included references to salmon: Salmon Act 1986 s 37(1), (3) (s 37(3) amended by the Environment Act 1995 s 105, Sch 15 para 24). 'Salmon' means fish of the salmon species and trout which migrate to and from the sea: Salmon Act 1986 s 37(5). The power of a local fisheries committee to make byelaws also includes power to make



byelaws, with the consent of the Environment Agency, which for the purposes of the Salmon and Freshwater Fisheries Act 1975 s 6 (as amended) (see para 854 ante) authorise the placing and use of fixed engines at such places in their sea fisheries district, at such times and in such manner as may be prescribed by the byelaws and impose requirements as to the construction, design, material and dimensions of such engines, including in the case of nets the size of mesh: Salmon Act 1986 s 37(2), (3) (as so amended). For the purposes of any byelaws made by virtue of s 37 (as amended), the references to sea fish in the Sea Fisheries Regulation Act 1966 s 10(2) (c) and s 12 (which include provision with respect to the seizure of, and searches for, sea fish taken in contravention of byelaws: see para 1012 post) are deemed to include references to salmon: Salmon Act 1986 s 37(4).

5 Sea Fisheries Regulation Act 1966 s 5(2).

6 Ie under ibid s 5 (as amended).

7 Ibid s 5A(1) (s 5A added by the Environment Act 1995 s 102(1), (5)). For these purposes, 'marine environmental purposes' means the purposes: (1) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or (2) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment: Sea Fisheries Regulation Act 1966 s 5A(4) (as so added). The power to make byelaws under s 5 (as amended) by virtue of s 5A (as added) is in addition to, and not in derogation from, the power to make byelaws under s 5 (as amended) otherwise than by virtue of s 5A (as added): s 5A(2) (as so added). Byelaws under s 5 (as amended) by virtue of s 5A (as added) must be submitted for confirmation under s 7 (see the text and note 8 infra): (a) in the case of a byelaw which is to have effect in England, only after consultation with Natural England; (b) in the case of a byelaw which is to have effect in Wales, only after consultation with the Countryside Council for Wales: s 5A(3) (as so added). As to Natural England (ie the successor to the Countryside Agency and English Nature, which had previously taken over from the Nature Conservancy Council for England) see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523.

8 Ibid s 7(1). A committee which intends to apply to the Secretary of State or the Welsh Ministers for confirmation of a byelaw which it has made must give notice of that intention by advertisement appearing in two consecutive weeks in such newspapers, circulating in the district for which the byelaw has been made and elsewhere if the Secretary of State or the Welsh Ministers so determine, as may be approved for the purpose of that advertisement: Sea Fisheries (Byelaws) Regulations 1985, SI 1985/1785, reg 5(1). The advertisement must contain: (1) either a copy of the byelaw, or a summary of its provisions and the address where the byelaw may be inspected free of charge; (2) a statement that any person who wishes to object to the confirmation of the byelaw must send a statement of his objection in writing to the Secretary of State or the Welsh Ministers not more than 28 days after the date of the newspaper in which the advertisement appears and that such person must send a copy of that statement to the clerk of the committee; and (3) the address of the clerk of the committee: reg 5(2). See note 9 infra.

9 Sea Fisheries Regulation Act 1966 s 7(2). An application for confirmation of a byelaw must be sent to the Secretary of State or the Welsh Ministers not less than 28 days after the date of the newspaper in which the advertisement referred to in note 8 supra last appeared, together with: (1) a copy of the byelaw signed by the clerk of the committee; (2) a copy of the notice of the intention to propose the byelaw at a meeting of the committee, indorsed with a statement signed by the clerk of the committee stating that the notice was given in accordance with the requirements of the Sea Fisheries (Byelaws) Regulations 1985, SI 1985/1785, reg 4 (see note 3 supra) and specifying the date or dates on which the notice was given; (3) a copy of the page containing the advertisement from each newspaper in which the advertisement appeared: reg 5(3). The provisions of reg 5(1), (2) (see note 8 supra) and reg 5(3)(c) (see head (3) supra) do not apply to a byelaw which revokes a previous byelaw and: (a) re-enacts it without modifying its effect; or (b) makes no further enactment, and an application for confirmation of such a byelaw may be sent to the Secretary of State or the Welsh Ministers as soon as the byelaw has been made: reg 5(4).

10 Sea Fisheries Regulation Act 1966 s 8 (amended by the Environment Act 1995 s 102(1), (6)). Before revoking the byelaw the Secretary of State or the Welsh Ministers must give notice to the committee, consider any objection raised and, if required by the committee, hold a public inquiry: Sea Fisheries Regulation Act 1966 s 8.

## UPDATE

### 969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **974-978 Byelaws**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

### **974 Making of byelaws**

NOTES 1, 3, 8, 9--SI 1985/1785 revoked: SI 2010/630 (Wales).

NOTE 4--Salmon Act 1986 s 37 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **975. Contents of byelaws.**

A local fisheries committee<sup>1</sup> may make byelaws<sup>2</sup> for all or any of the following purposes<sup>3</sup>:

- (1) restricting or prohibiting, either absolutely or subject to such regulations as may be provided by the byelaws, any method of fishing for sea fish<sup>4</sup> or the use of any instrument of fishing for sea fish; determining the size of mesh, form and dimensions of any instrument of fishing for sea fish<sup>5</sup>; and restricting or prohibiting, either absolutely or subject to any exceptions and regulations, the fishing for or taking of all or any specified kinds of sea fish during any period specified in the byelaws<sup>6</sup>;
- (2) constituting within the district of the local sea fisheries committee making the byelaw any district of oyster cultivation for certain purposes<sup>7</sup>;
- (3) directing that certain statutory provisions<sup>8</sup> which permit edible crabs to be taken for bait in circumstances which would otherwise be illegal are not to apply<sup>9</sup>;
- (4) revoking or amending certain orders<sup>10</sup> which restrict or prohibit the taking of crabs and lobsters from specified waters during specified periods<sup>11</sup>;

(5) regulating, protecting and developing fisheries for all or any specified kinds of shellfish<sup>12</sup>; any such byelaw may provide among other things:

1. (a) for fixing the size and condition at which shellfish may not be removed from a fishery, and the mode of determining such sizes<sup>13</sup>;
2. (b) for an obligation to redeposit in specified localities any shellfish, the removal or possession of which is prohibited by or in pursuance of any Act<sup>14</sup>;
3. (c) for the protection of shellfish laid down for breeding purposes<sup>15</sup>;
4. (d) for protection of culch<sup>16</sup> and other material for the reception of spat<sup>17</sup>, and for an obligation to redeposit such culch and other material in specified localities<sup>18</sup>;

(6) revoking or amending any byelaw made under the above provisions<sup>19</sup>.

The power to make byelaws may also be exercised for marine environmental purpose<sup>20</sup>.

1 As to local fisheries committees see para 964 ante.

2 As to the making of byelaws see para 974 ante. As to restrictions on the power to make byelaws see para 977 post.

3 The power to make byelaws is not confined to the preservation of immature fish: *Friend v Brehout* (1914) 111 LT 832, DC.

4 'Sea fish' means fish of any description found in the sea including shellfish but does not include: (1) fish of the salmon species; or (2) trout which migrate to and from the sea: Sea Fisheries Regulation Act 1966 s 20(1).

5 Ibid s 5(1)(b). As to the penalties for contravention of byelaws made under s 5 (as amended) see para 978 post. Nothing contained in any byelaw made or having effect as if made under s 5 (as amended) is to be taken to authorise the carrying of fishing nets in circumstances where the carrying of those nets would otherwise be unlawful by virtue of an order made under the Sea Fish (Conservation) Act 1967 s 3 (as amended) (regulation of nets and other fishing gear: see para 980 post): s 3(7). Although a boat is not strictly speaking an 'instrument of fishing', the Sea Fisheries Regulation Act 1966 s 5 (as amended) is sufficiently widely drawn to allow a byelaw made under it to restrict the size of vessel used for fishing: see *R v Ministry of Agriculture, Fisheries and Food, ex p Bray* [1999] 916 LS Gaz R 36, [1999] All ER (D) 308.

6 Sea Fisheries Regulation Act 1966 s 5(1)(a). A byelaw is not ultra vires merely because its object is to protect crab fisheries only: *Friend v Brehout* (1914) 111 LT 832, DC.

7 Sea Fisheries Regulation Act 1966 s 5(1)(e) (amended by the Sea Fisheries (Shellfish) Act 1967 s 24(1), Sch 2). The purposes referred to in the text are those of the Sea Fisheries (Shellfish) Act 1967 s 16(2) (as amended) (which prohibits the sale of oysters between certain dates: see para 1044 post): see the Sea Fisheries Regulation Act 1966 s 5(1)(e) (as so amended).

8 I.e. the provisions of the Sea Fisheries (Shellfish) Act 1967 s 17(2): see para 1046 post.

9 Sea Fisheries Regulation Act 1966 s 5(1)(f) (amended by the Sea Fisheries (Shellfish) Act 1967 s 24(1), Sch 2).

10 I.e. orders under the Fisheries (Oyster, Crab and Lobster) Act 1877 s 10 (repealed). This provision is not reproduced in the Sea Fisheries (Shellfish) Act 1967, which repealed the whole of the Fisheries (Oyster, Crab and Lobster) Act 1877 (see the Sea Fisheries (Shellfish) Act 1967 s 24(2), Sch 3). As there were no orders extant at the coming into force of the Sea Fisheries (Shellfish) Act 1967, the power to revoke or amend such orders is otiose, there being no orders upon which the power can operate.

11 Sea Fisheries Regulation Act 1966 s 5(1)(g).

12 For the meaning of 'shellfish' see para 971 note 2 ante.

13 Sea Fisheries Regulation Act 1966 s 5(1)(d)(i). The offence of removal is complete as soon as the shellfish have been taken up from any part of the fishery with the intention of eventually carrying them away (*Thomson v Burns* (1896) 66 LJQB 176, DC); yet it seems that the real test is whether there has been sufficient severance for the purpose of taking away (see *Thomson v Burns* supra at 177 per Wright J).

- 14 Sea Fisheries Regulation Act 1966 s 5(1)(d)(ii).
- 15 Ibid s 5(1)(d)(iii).
- 16 ie stones, old oysters shells, and other hard materials forming an oyster bed.
- 17 Sea Fisheries Regulation Act 1966 s 5(1)(d)(iv). Spat is the spawn or young of any kinds of shellfish.
- 18 Ibid s 5(1)(d)(v). These powers include power to forbid trawl fishing in an area where crab fishermen require protection: *Friend v Brehout* (1914) 111 LT 832, DC (a case under equivalent provisions of the Sea Fisheries (Shell Fish) Regulation Act 1894 s 1(1), (3) (repealed)).
- 19 Sea Fisheries Regulation Act 1966 s 5(1)(h).
- 20 See ibid s 5A (as added); and para 974 ante.

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **974-978 Byelaws**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

### **975 Contents of byelaws**

NOTE 5--Sea Fish (Conservation) Act 1967 s 3(7) amended: Marine and Coastal Access Act 2009 Sch 14 para 7 (not yet in force).

Sea Fish (Conservation) Act 1967 s 3(7) repealed in part: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **976. Copies of byelaws.**

A local fisheries committee<sup>1</sup> must cause copies of all byelaws made by it under its statutory powers<sup>2</sup>, and for the time being in force, to be kept posted up in some conspicuous place or places within its district, and must supply copies of all such byelaws to any applicant<sup>3</sup>.

1 As to local fisheries committees see para 964 ante.

2 Ie under the powers conferred by the Sea Fisheries Regulation Act 1966. See paras 974-975 ante.

3 Ibid s 9(1) (amended by the Local Fisheries Committees (Fees for Copy Byelaws) Order 1993, SI 1993/1116, art 2). As to evidence of the making and confirmation of byelaws by production of copies see the Sea Fisheries Regulation Act 1966 s 9(2); and para 1020 text and note 11 post.

### **UPDATE**

#### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

#### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

#### **974-978 Byelaws**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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## **977. Savings in respect of byelaws.**

Nothing in the Sea Fisheries Regulation Act 1966<sup>1</sup> authorises a local fisheries committee<sup>2</sup> to make any byelaw: (1) which prejudicially affects any right of several fishery<sup>3</sup>, or any right on, to or over any portion of the sea shore, where any such right is enjoyed by any person under any local or special Act, or any royal charter, letters patent, prescription or immemorial usage, except with the consent of that person<sup>4</sup>; or (2) which affects any byelaw made by the Environment Agency<sup>5</sup>, and for the time being in force within the district of the committee, or which restricts the power of the Agency to make any byelaw having effect within that district<sup>6</sup>.

1 See paras 974-975 ante.

2 As to local fisheries committees see para 964 ante.

3 As to several fisheries see para 805 ante.

4 Sea Fisheries Regulation Act 1966 s 6(a). See further CUSTOM AND USAGE.

5 Ibid s 6(b) refers to a river authority. As to the devolution of functions to the Environment Agency see para 847 ante. As to the byelaw-making powers of the Environment Agency see para 932 ante.

6 Ibid s 6(b).

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **974-978 Byelaws**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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### **978. Contravention of byelaws.**

Any person who contravenes any byelaw of a local fisheries committee<sup>1</sup> is guilty of an offence and liable on summary conviction to a fine<sup>2</sup>. Where any vessel<sup>3</sup> is used for fishing<sup>4</sup> in a manner constituting a contravention of any byelaw of a local fisheries committee having effect under certain statutory provisions<sup>5</sup>, both the skipper and the owner<sup>6</sup> of the vessel is guilty of an offence and liable on summary conviction to a fine<sup>7</sup>. The court by which a person is convicted of such an offence<sup>8</sup> may order the forfeiture of any net or other fishing gear used in committing the offence and any fish in respect of which the offence was committed<sup>9</sup>.

1 As to local fisheries committees see para 964 ante.

2 Sea Fisheries Regulation Act 1966 s 11(5). The fine must not exceed level 5 on the standard scale: s 11(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante. The Sea Fisheries Regulation Act 1966 s 11(5) (as amended) is expressed to be without prejudice to s 11(2) (as amended), (3), (4): see the text and notes 3-7 infra.

3 For the meaning of 'vessel' see para 966 note 4 ante. As to the application of the Sea Fisheries Regulation Act 1966 to hovercraft see para 956 note 4 ante.

4 'Fishing' within the meaning of *ibid* s 11(2) (as amended) includes everything necessary to remove fish from the sea and reduce them to useful possession: *Alexander v Tonkin* [1979] 2 All ER 1009, [1979] 1 WLR 629.

5 *Ie* under the Sea Fisheries Regulation Act 1966 s 5(1)(a), (b): see para 975 ante.

6 In any proceedings which, by virtue of *ibid* s 11 (as amended), are taken against the owner of a vessel in respect of an offence under s 11(2) (as amended) committed by the skipper, it is a good defence for the owner to prove that he exercised all due diligence to prevent the commission of that offence: s 11(3). See note 7 infra.

7 *Ibid* s 11(2). The fine must not exceed level 5 on the standard scale: s 11(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The Sea Fisheries Regulation Act 1966 s 11(2) (as amended) and s 11(3) (see note 6 supra) have effect in relation to any vessel which at the material time is under charter as if any reference in s 11(2) (as amended) or s 11(3) to the owner were a reference to the charterer: s 11(4). As to offences by corporations see para 1016 post.

8 *Ie* an offence under *ibid* s 11(2) (as amended): see the text and notes 3-7 supra.

9 *Ibid* s 11(2A) (added by the Sea Fishery Limits Act 1976 s 5, Sch 1 para 1(3)).

### **UPDATE**

#### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

#### **971-978 Stocking public fisheries ... Contravention of byelaws**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **974-978 Byelaws**

Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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## **(iv) Regulation of Sea Fishing**

### **A. METHOD OF SEA FISHING**

#### **979. Fishing implements for sea fishing.**

Except within the limits of a several shellfish fishery<sup>1</sup> or of a private oyster bed<sup>2</sup> there are no restrictions on the types of fishing implements that may be used to catch sea fish other than those which may be contained in the byelaws of a local sea fisheries committee<sup>3</sup> or in orders regulating the construction, design, material and size of nets and other fishing gear (including mesh sizes of nets)<sup>4</sup>.

The use of dynamite or other explosive, any poison or other noxious substance, or any electrical device to catch or destroy fish in any waters, including waters adjoining the coast of England or Wales to a distance of six nautical miles from the baselines from which the breadth of the territorial sea is measured, is illegal<sup>5</sup>.

<sup>1</sup>     le within the limits of the areas of a fishery for oysters, mussels, cockles, clams, lobsters and any other molluscs or crustaceans specified in regulations, or any one or more of them, with respect to which the right of several fishery is conferred or in any part of that area, described for the purposes of the Sea Fisheries (Shellfish) Act 1967 s 7(4) (as amended), in an order under s 1 (as amended): see paras 1032, 1038 post.

<sup>2</sup>     As to private oyster beds see para 1038 post.

<sup>3</sup>     As to byelaws see paras 974-978 ante.

<sup>4</sup>     For these orders see para 980 post.

<sup>5</sup>     See the Salmon and Freshwater Fisheries Act 1975 s 5(1) (as amended); and para 916 ante. As to the fishery limits see para 961 ante.

### **UPDATE**



## **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **980. Construction of nets and other fishing gear.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may make orders for securing that the nets and other fishing gear carried in any relevant British fishing boat<sup>2</sup> registered in the United Kingdom<sup>3</sup> comply with such requirements as to construction, design, material or size, including, in the case of nets, size of mesh, as may be prescribed by the order<sup>4</sup>.

Any such order, or any of its provisions, may be framed so as to apply only in relation to fishing for specified descriptions of sea fish<sup>5</sup>, to specified methods of fishing, or to fishing in specified areas or during specified periods<sup>6</sup>. Such an order may be made so as to extend to nets or other fishing gear carried in any waters adjacent to the United Kingdom and within relevant British fishery limits<sup>7</sup> by Scottish fishing boats<sup>8</sup> or fishing boats registered in any country outside the United Kingdom or not registered in any country<sup>9</sup>. An order made under this power prescribing minimum sizes of mesh may also prescribe the manner in which the sizes of mesh are to be measured and, in the case of any class of nets, may prescribe different sizes for the nets when in different conditions<sup>10</sup>. It may make provision for securing that the restrictions imposed by the order are not evaded by the use of any nets in such manner as practically to diminish their mesh, or by the covering of nets with canvas or any other material, or by the use of any other artifice<sup>11</sup>. It may provide for exempting any nets from any such restrictions, either generally or in relation to particular fishing boats or classes of fishing boats, if and so long as such conditions as may be imposed by or under the order are complied with<sup>12</sup>. In relation to any fishing gear an order made under this power may restrict the manner in which it is to be used, prescribe the manner in which its size is to be measured, make provision for securing that the restrictions imposed by the order are not evaded, and make provision for exemption similar to that in relation to nets<sup>13</sup>.

Nothing in any such order<sup>14</sup> applies in relation to fishing operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation or for the purpose of transplanting fish from one fishing ground to another<sup>15</sup>. Restrictions imposed by any such order are in addition to and not in substitution for restrictions imposed by or under Acts other than the Sea Fish (Conservation) Act 1967<sup>16</sup>.

If any such order is contravened in the case of any fishing boat, the master<sup>17</sup>, owner and charterer, if any, is each guilty of an offence<sup>18</sup> and, in addition to the prescribed penalties<sup>19</sup>, the court by which the offender is convicted may order the forfeiture of the net or other fishing gear in respect of which the contravention constituting the offence occurred<sup>20</sup>.

The Secretary of State or the Welsh Ministers may also by order prohibit in any area specified in the order and either for a period so specified or without limitation of time fishing for sea fish, or for any description of sea fish specified in the order, by any method so specified, by any fishing boat to which the prohibition applies<sup>21</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 For the meanings of 'fishing boat' and 'relevant British fishing boat' see para 969 note 4 ante.

3 For the meaning of 'United Kingdom' see para 843 note 1 ante.

4 Sea Fish (Conservation) Act 1967 s 3(1) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2)). As to international conventions see para 960 ante. Orders under the Sea Fish (Conservation) Act 1967 s 3 (as amended) must be made by statutory instrument which, as respects England, must be laid before Parliament; and such orders may be varied or revoked by subsequent order: see s 20(1)-(3); and para 959 ante. For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to publication of orders under the Sea Fish (Conservation) Act 1967 s 3 (as amended) see para 969 note 2 ante; and as to enforcement see paras 1006, 1012 post.

5 For the meaning of 'sea fish' see para 969 note 3 ante.

6 Sea Fish (Conservation) Act 1967 s 3(1) (as amended: see note 4 supra).

7 'Relevant British fishery limits' means British fishery limits so far as they do not relate to the Scottish zone; and 'the Scottish zone' means the sea within British fishery limits (that is, the limits set by or under the Fishery Limits Act 1976 s 1: see para 961 ante) which is adjacent to Scotland: Sea Fish (Conservation) Act 1967 s 22(1) (definition added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (11)); Scotland Act 1998 s 126(1).

8 For the meaning of 'Scottish fishing boat' see para 969 note 4 ante.

9 Sea Fish (Conservation) Act 1967 s 3(2) (amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 16(1); and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2), (4)).

10 Sea Fish (Conservation) Act 1967 s 3(3)(a).

11 Ibid s 3(3)(b).

12 Ibid s 3(3)(c).

13 Ibid s 3(4)(a)-(d). Section 3(4) is expressed to be without prejudice to s 3(3) (see the text and notes 10-12 supra). As to the provision for exemption in relation to nets see the text to note 12 supra.

14 Ie any order made under ibid s 3 (as amended): see the text and notes 1-13 supra.

15 Ibid s 9(2).

16 Ibid s 3(6). Nothing in s 3 (as amended) affects any power conferred by any Act to regulate sea fishing: s 3(6). As to the effect of orders made under s 3 (as amended) on byelaws of local sea fisheries committees see para 975 note 5 ante.

17 In relation to any vessel, 'master' includes the person for the time being in command or charge of the vessel: ibid s 22(1).

18 Ibid s 3(5). As to offences committed by bodies corporate see para 1016 post. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

19 A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: Sea Fish (Conservation) Act 1967 s 11(1)(b) (s 11(1), (3) substituted by the Fisheries Act 1981 s 24(1)). Any person guilty of an offence under the Sea Fish (Conservation) Act 1967 s 3 (as amended) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed or the fish caught with the net or

other fishing gear in respect of which the contravention constituting the offence occurred: see s 11(3), (5) (s 11(3) as so substituted). However, a person is not liable to a fine under s 11(3) (as substituted) if the court orders the forfeiture of the fish in respect of which the offence was committed under s 11(2) (as substituted) (see the text to note 20 infra) (see s 11(4)); but this provision is without prejudice to any other penalty (whether pecuniary or otherwise) to which he may be liable in respect of that offence (see s 11(5)). See also para 1015 post.

20 Ibid s 11(2)(b) (substituted by the Fisheries Act 1981 s 24(1)).

21 Sea Fish (Conservation) Act 1967 s 5(1)(c) (substituted by the Fisheries Act 1981 s 22(1)). As to this power, and as to the powers to prohibit fishing for sea fish conferred by the Sea Fish (Conservation) Act 1967 s 5(1)(a), (b) (as substituted), see para 989 post.

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **980 Construction of nets and other fishing gear**

TEXT AND NOTES 9, 12, 18--Sea Fish (Conservation) Act 1967 s 3(3)(c) amended, s 3(2A), (2B), (5A) added: Marine and Coastal Access Act 2009 s 195, Sch 15 para 2.

NOTE 15--See Marine and Coastal Access Act 2009 s 8.

NOTE 19--Sea Fish (Conservation) Act 1967 s 11(1)(b) repealed, s 11(3) amended: Marine and Coastal Access Act 2009 Sch 15 para 4, Sch 22 Pt 5.

NOTE 21--Sea Fish (Conservation) Act 1967 s 5(1) further substituted: Marine and Coastal Access Act 2009 s 198(2).

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### **981. Regulation of nets and other fishing gear.**

Regulations have been made<sup>1</sup> to regulate the carriage and use of certain nets and fishing gear in specified areas. The regulations control the carriage and use of nets<sup>2</sup> and also regulate the use of other equipment used with regulated nets<sup>3</sup> of specified sizes in specified areas<sup>4</sup>. The regulations set out the manner in which net sizes are to be measured<sup>5</sup>. British sea fishery officers<sup>6</sup> are given powers in relation to enforcement of the regulations<sup>7</sup>.

Further regulations have been made in relation to scallop fishing<sup>8</sup> and shrimp fishing<sup>9</sup>. The use of beam trawls and passive fishing gear is also regulated<sup>10</sup>.

1 See the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284 (amended by SI 1999/74); the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380 (amended by SI 1992/1344; SI 2001/649); and the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649. These orders were made under the Sea Fish (Conservation) Act 1967 s 3 (as amended) (see para 980 ante). As to European legislation see para 796 ante.

2 See the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284, art 2 (amended by SI 1999/74); the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 4 (substituted by SI 1992/1344; and amended by SI 2001/649); and the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649, art 4.

3 Restrictions are placed on the use of codend and extension pieces (see the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 6 (amended by SI 1992/1344)), and strengthening bags and topside chafers (see the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 7 (amended by SI 1992/1344)). These terms are defined in the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 2 (amended by SI 1992/1344).

4 As to the size of mesh permitted, and the construction of nets that can be used in defined areas see the Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 4 (as substituted and amended: see note 2 supra); the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284, art 2 (as amended: see note 2 supra); and the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649, art 4. Exemptions are provided for bream trawlers, and fishing for queen scallops and nephrops see the Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 3 (substituted by SI 1992/1344); and the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649, art 3. See also the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284, art 3 (amended by SI 1999/74).

5 See the Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 5, which provides that nets are to be measured in accordance with EEC Commission Regulation 2108/84 (OJ L194, 24.7.84, p 22) laying down detailed rules for determining the mesh size of fishing nets. See also the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649, art 5.

6 As to British sea fishery officers generally see para 1002 et seq post.

7 See the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284, art 4; the Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 1991, SI 1991/1380, art 8; and the Sea Fish (Specified Sea Areas) (Regulation of Nets and other Fishing Gear) Order 2001, SI 2001/649, art 7.

8 See the Scallop Fishing Order 2004, SI 2004/12; and the Scallop Fishing (Wales) Order 2005, SI 2005/1717.

9 See the Shrimp Fishing Nets Order 2002, SI 2002/2870; and the Shrimp Fishing Nets (Wales) Order 2003, SI 2003/3035.

10 See the Sea Fishing (Marking and Identification of Passive Fishing Gear and Bream Trawls) (England) Order 2006, SI 2006/1549.

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **981 Regulation of nets and other fishing gear**

NOTE 8--SI 2005/1717 revoked: SI 2009/2721.

NOTE 9--SI 2003/3035 replaced: Shrimp Fishing Nets (Wales) Order 2008, SI 2008/1811 (amended by SI 2008/3144).

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## ***B. LICENSING OF FISHING BOATS***

### **982. Restrictions on fishing by British fishing boats.**

A relevant British fishing boat<sup>1</sup> may not fish for sea fish<sup>2</sup>, trans-ship sea fish<sup>3</sup> or land sea fish in the United Kingdom<sup>4</sup> unless the boat is qualified in accordance with an order made by the Secretary of State or the Welsh Ministers<sup>5</sup> under the British Fishing Boats Act 1983<sup>6</sup>. An order made prescribing qualifications for relevant British fishing boats may prescribe conditions for qualification with respect to the nationality of the members of the crew of a fishing boat or of any proportion of those members<sup>7</sup>. The conditions so prescribed must be such as appear to the Secretary of State or the Welsh Ministers to be necessary or expedient for the protection of the sea fishing industry in England and Wales and Northern Ireland<sup>8</sup>. Where a relevant British fishing boat is not qualified for fishing or trans-shipping fish in a restricted fishing area<sup>9</sup>, its fishing gear must be stowed in accordance with any order relating to that area<sup>10</sup>. If this provision is contravened in the case of any fishing boat the master<sup>11</sup>, the owner and the charterer are guilty of an offence<sup>12</sup>.

A relevant British fishing boat is qualified for these purposes<sup>13</sup> in any waters within British fishery limits if at least 75 per cent of the members of the crew of the boat are British citizens or nationals of any other member state<sup>14</sup>.

1 'British fishing boat' means a fishing vessel which either is registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq) or is wholly British owned; and 'wholly British-owned' means wholly owned by persons qualified to own British ships for the purposes of Pt II (as amended): British Fishing Boats Act 1983 s 9 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 68). For the meaning of 'United Kingdom' see para 843 note 1 ante. 'Relevant British fishing boat' means a fishing boat which is not a Scottish fishing boat; and 'Scottish fishing boat' means a fishing vessel which is registered in the register maintained under the Merchant Shipping Act 1995 s 8 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging: British Fishing Boats Act 1983 s 9. 'Fishing boat' means any vessel for the time being employed in fishing operations or any operations ancillary to fishing operations: s 9. As to the application of the British Fishing Boats Act 1983 to Guernsey see the British Fishing Boats Act 1983 (Guernsey) Order 1985, SI 1985/1203.

2 'Sea fish' includes shellfish, salmon and migratory trout; and 'sea fishing industry' has a corresponding meaning: British Fishing Boats Act 1983 s 9. The operation of fishing for sea fish in any area for the time being specified in an order is restricted: see s 1(2)(a).

3 See *ibid* s 1(2)(b). This prohibition only relates to trans-shipment within an area specified by order: see s 1(2)(b).

4 See *ibid* s 1(2)(c).

5 See para 846 ante.

6 British Fishing Boats Act 1983 s 1(1), (2) (s 1(1) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 70). The British Fishing Boats Order 1983, SI 1983/482, has been made under this provision: see the text and notes 10, 13-14 *infra*. Any power to make an order under the British Fishing Boats Act 1983 s 1 (as amended) is exercisable by statutory instrument: see s 1(8). Provision is made for the payment of administrative expenses: see s 8.

7 *Ibid* s 1(3) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 70).

8 British Fishing Boats Act 1983 s 1(4) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 70). Any such conditions must not discriminate between British citizens and persons who are nationals of any other member state: British Fishing Boats Act 1983 s 1(4). As to British citizenship see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 23 *et seq*.

9 References to a restricted fishing area are references to any area for the time being specified in an order made under *ibid* s 1(1) (as amended) (see the text and notes 1-6 *supra*): ss 1(2), 9.

10 See *ibid* s 1(5) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 70). As to the stowage of gear within British fishery limits see the British Fishing Boat Regulations 1983, SI 1983/482, reg 5. As to British fishery limits see para 961 *ante*.

11 'Master' includes, in relation to any fishing boat, the person for the time being in command or charge of the boat: British Fishing Boats Act 1983 s 9.

12 *Ibid* s 1(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: s 1(6). The court by or before which a person is convicted of such an offence may order the forfeiture of any fish or fishing gear found in the boat in relation to which the offence was committed or taken or used by any person from the boat: s 1(7). As to the powers of enforcement under the British Fishing Boats Act 1983 see para 1007 *post*. As to offences committed by bodies corporate see para 997 *post*.

13 *Ibid* for use in carrying out the operations mentioned in *ibid* s 1(2): see the text and notes 2-6 *supra*.

14 British Fishing Boat Regulations 1983, SI 1983/482, regs 3, 4.

## UPDATE

### 969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### 983. The making of orders.

The licensing system introduced by the Sea Fish (Conservation) Act 1967 has been modified and extended by the Fisheries Limits Act 1976 and the Sea Fish (Conservation) Act 1992<sup>1</sup>.

The Secretary of State or the Welsh Ministers<sup>2</sup> may by order provide that: (1) in any specified area within relevant British fishery limits<sup>3</sup> fishing by fishing boats<sup>4</sup>, whether relevant British

fishing boats, Scottish fishing boats or foreign fishing boats<sup>5</sup>, is prohibited unless authorised by a licence<sup>6</sup> granted by the Secretary of State or the Welsh Ministers<sup>7</sup>; or (2) in any specified area outside those limits fishing by relevant British fishing boats is prohibited unless so authorised<sup>8</sup>. Such an order may apply to fishing generally in the specified area or it may be limited in scope<sup>9</sup>, and in either case the order may provide for exceptions from the prohibition contained in it<sup>10</sup>.

Where any fishing boat is used in contravention of any prohibition imposed by such an order, the master<sup>11</sup>, the owner and any charterer is each guilty of an offence<sup>12</sup>.

1       Ie by the Sea Fish (Conservation) Act 1967 s 4 (as originally enacted). Orders made under s 4 (as originally enacted) continue in force and have effect and may be varied or revoked as if they were orders made under s 4 (as substituted and amended) prohibiting, unless licensed, fishing by British fishing boats by way of trade or business in the area specified in the orders: Fishery Limits Act 1976 s 9(2), Sch 3 para 4(1), (2). Where this area is specified by reference to the 'fishery limits of the British Islands' that reference continues to be construed in accordance with the Fishery Limits Act 1964: Fishery Limits Act 1976 Sch 3 para 4(3). Licences authorising fishing in the area to which the orders apply also continue in force and have effect and may be varied, revoked or suspended as if they had been granted under s 4 (as substituted and amended): Sch 3 para 4(4).

2       As to the Secretary of State and the Welsh Ministers see para 846 ante.

3       For the meaning of 'relevant British fishery limits' see para 980 note 7 ante. As to fishery limits see para 961 ante.

4       For the meaning of 'fishing boat' see para 969 note 4 ante.

5       For this purpose, 'relevant British fishing boat' means a fishing boat which is not a Scottish fishing boat and which is registered in the United Kingdom or is British-owned; and 'foreign fishing boat' means a fishing boat which is not so registered or owned and which is not a Scottish fishing boat: Sea Fish (Conservation) Act 1967 s 4(12) (s 4 substituted by the Fishery Limits Act 1976 s 3; and the Sea Fish (Conservation) Act 1967 s 4(1), (12) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43). For the meaning of 'Scottish fishing boat' see para 969 note 4 ante.

6       A charge may be made for granting a licence: see the Sea Fish (Conservation) Act 1967 s 4(4) (as substituted: see note 5 supra).

7       Ibid s 4(1)(a) (as substituted and amended: see note 5 supra). See the Sand Eels Licensing Order 1989, SI 1989/1066; the Sea Fish (Specified Manx Waters) Licensing Order 1990, SI 1990/2051; and the Sea Fish Licensing Order 1992, SI 1992/2633 (amended by SI 1993/188; SI 1993/2291; SI 1999/1820).

8       Sea Fish (Conservation) Act 1967 s 4(1)(b) (as substituted and amended: see note 5 supra). The licensing powers conferred by s 4 (as substituted and amended) may be exercised so as to limit the number of fishing boats, or of any class of fishing boats, engaged in fishing in any area for any description of fish, to the extent which the Secretary of State considers or the Welsh Ministers consider necessary or expedient for the regulation of sea fishing: s 4(8) (as so substituted). Although the Secretary of State or the Welsh Ministers may arrange for any of the licensing powers to be exercised by other persons on his or their behalf, the power to make orders under s 4(1) (as substituted and amended) may not be delegated: s 4(11) (as so substituted).

Section 4 (as substituted and amended), any other enactment which provides for regulating the catching or landing of sea fish, and any order or byelaw made at any time under any such enactment, do not restrict the carrying on of any operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, nor do they restrict the landing of sea fish caught in the course of any such operations: s 9(4), (5). The provisions of s 9(4) have effect in addition to, and not in derogation of, s 9(1)-(3) (s 9(1) as amended) (see paras 988, 989 note 6 post) and any express saving or exemption contained in such other enactment or in any order or byelaw made under an enactment to which s 9(4) applies: s 9(6). For this purpose, 'sea fish' includes salmon and migratory trout: s 9(7). As to the regulation of landing of foreign-caught sea fish see para 969 ante. As to further restrictions on landing and sale see para 988 post.

9       Ie an order may be limited to fishing: (1) for a specified description of sea fish; (2) by a specified method; (3) during a specified season of the year or other period; or (4) in the case of an order under ibid s 4(1)(a) (as substituted and amended) (see the text and notes 1-7 supra), by fishing boats registered in a specified country: s 4(2)(a)-(d) (as substituted: see note 5 supra).

10       Ibid s 4(2) (as substituted: see note 5 supra).

11 As to the meaning of 'master' see para 980 note 17 ante.

12 Sea Fish (Conservation) Act 1967 s 4(3) (as substituted: see note 5 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: s 11(1)(a) (substituted by the Fisheries Act 1981 s 24(1); and amended by the Sea Fish (Conservation) Act 1992 s 5). The court by or before which a person is convicted of such an offence may order that the owner or any charterer of the vessel used to commit the offence be disqualified for a specified period from holding a licence in respect of that vessel: Sea Fish (Conservation) Act 1967 s 11(2)(c) (s 11(2), (3) substituted by the Fisheries Act 1981 s 24(1)). The court may also order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence: Sea Fish (Conservation) Act 1967 s 11(2)(d) (as so substituted). The court has no power, however, to order forfeiture under this provision if a fine is imposed under the Sea Fish (Conservation) Act 1967 s 11(3) (as substituted): see s 11(4). Any person guilty of an offence under s 4(3) (as substituted) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) as so substituted). However, a person is not liable to a fine under s 11(3) (as substituted) if the court orders the forfeiture of the fish in respect of which the offence was committed under s 11(2) (as substituted) (see s 11(4)); but this provision is without prejudice to any other penalty (whether pecuniary or otherwise) to which he may be liable in respect of that offence (see s 11(5)). See also para 1015 post. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **983 The making of orders**

TEXT AND NOTES--The Secretary of State's function of granting licences under the Sea Fish (Conservation) Act 1967 s 4 is transferred to the Marine Management Organisation, and s 4 is accordingly further amended: see Marine and Coastal Access Act 2009 s 4. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 6--See further Sea Fish (Conservation) Act 1967 ss 4(4A), 22(3A) (added by Marine and Coastal Access Act 2009 s 196).

NOTE 8--The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1)-(4) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 12--Sea Fish (Conservation) Act 1967 s 11(1)(a) further amended, s 11(3) amended, Sea Fish (Conservation) Act 1992 s 5 partly repealed: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.



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#### **984. The granting of licences.**

A licence<sup>1</sup> is granted to the owner or charterer in respect of a named vessel<sup>2</sup> and may authorise fishing generally or may confer limited authority by reference to, in particular: (1) the area within which fishing is authorised; (2) the periods, times or particular voyages during which fishing is authorised; (3) the descriptions and quantities of fish which may be taken; or (4) the method of sea fishing<sup>3</sup>.

A licence may authorise fishing either unconditionally or subject to such conditions as the Secretary of State considers or the Welsh Ministers<sup>4</sup> consider to be necessary or expedient for the regulation of sea fishing, including conditions which do not relate directly to fishing<sup>5</sup>. In particular a licence may contain conditions: (a) as to the landing of fish or parts of fish taken under the authority of the licence, including specifying the ports at which the catch is to be landed; (b) as to the use to which the fish taken may be put; or (c) restricting the time which a vessel named in the licence may spend at sea, whether for the purpose of fishing or otherwise<sup>6</sup>. If a licence condition is broken the master, owner and any charterer of the vessel named in the licence is each guilty of an offence<sup>7</sup>.

Any licence may be varied from time to time, and may be revoked or suspended if the Secretary of State considers or the Welsh Ministers consider it necessary for the regulation of sea fishing or to be appropriate in a case where there is a contravention of a prohibition imposed by an order or a contravention of a condition of the licence<sup>8</sup>.

Where an order prohibits fishing in a specified area for a specified description of sea fish<sup>9</sup> there must be returned to the sea forthwith: (i) any sea fish of that description taken on board a fishing boat<sup>10</sup> in contravention of the order; and (ii) except so far as the order otherwise provides, any sea fish of that description taken on board a fishing boat in that area in the course of fishing for sea fish of a different description<sup>11</sup>.

The Secretary of State and the Welsh Ministers may by regulations make provision as to the manner in which a licence<sup>12</sup> is to be granted, or a variation, revocation or suspension effected, and the time when a licence or a variation, suspension or revocation is to have effect<sup>13</sup>.

1        Is a licence under the Sea Fish (Conservation) Act 1967 s 4 (as substituted and amended): see para 983 ante.

2        As to the meaning of 'vessel' see para 969 note 4 ante.

3        Sea Fish (Conservation) Act 1967 s 4(5) (s 4 substituted by Fishery Limits Act 1976 s 3).

4        See para 846 ante.

5        Sea Fish (Conservation) Act 1967 s 4(6) (as substituted (see note 3 supra); and amended by the Sea Fish (Conservation) Act 1992 s 1).

6        Sea Fish (Conservation) Act 1967 s 4(6) (as substituted (see note 3 supra); and amended (see note 5 supra)). A condition under head (c) in the text may not be imposed in relation to vessels of an overall length of 10 metres or less until a day to be appointed: Sea Fish (Conservation) Act 1992 s 11(2). At the date at which this volume states the law no such day had been appointed. A licence containing a condition under head (c) in the text may make provision as to the circumstances in which time is, or is not, to count as time spent at sea: Sea Fish (Conservation) Act 1967 s 4(6B) (s 4(6B)-(6D) added by the Sea Fish (Conservation) Act 1992 s 1). The Secretary of State and the Welsh Ministers must by order make provision as to the principles on which the time which vessels may spend at sea is to be arrived at for the purposes of such a condition: Sea Fish (Conservation) Act 1967 s 4(6C) (as so added). In exercise of this power, the Sea Fish Licensing (Time at Sea) (Principles) Order 1993, SI 1993/1196, has been made. As to the principles which may or may not be included in an order under the Sea Fish (Conservation) Act 1967 s 4(6C) (as added) see s 20(5A), (5B) (added by the Sea Fish

(Conservation) Act 1992 s 7). As to appeals against restrictions on time spent at sea see para 985 post. Before considering what action to take under the Sea Fish (Conservation) Act 1967 s 4(6C) (as added), the Secretary of State or the Welsh Ministers must first give due consideration to a scheme of decommissioning in order to achieve a significant reduction in the capacity of the fishing fleet: s 4(6D) (as so added).

Where automatic recording equipment is used in accordance with a condition included in a licence by virtue of s 4(6) (as substituted and amended), or is used to record information transmitted or derived from equipment used in accordance with such a condition, any record produced by means of the automatic recording equipment is evidence of the matters appearing from the record for the purpose of proceedings for an offence under s 4 (as amended): s 4C(1) (added by the Sea Fish (Conservation) Act 1992 s 4).

The conditions subject to which a licence may be granted may differ as between different vessels or between vessels of different descriptions: Sea Fish (Conservation) Act 1967 s 4(6A) (added by the Fisheries Act 1981 s 20(1)). The Secretary of State or the Welsh Ministers when granting a licence may require the master, owner and any charterer of the vessel named in the licence to provide him or them with such information in such form as directed; and a person who fails without reasonable excuse to comply with such a requirement is guilty of an offence: Sea Fish (Conservation) Act 1967 s 4(7) (as so substituted; and amended by the Fisheries Act 1981 s 20(2); and the Sea Fish (Conservation) Act 1992 s 1(1), (4)). As to the meaning of 'master' see para 980 note 17 ante. Any person who, for the purpose of obtaining a licence or in purported compliance with the Sea Fish (Conservation) Act 1967 s 4(7) (as substituted and amended), furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence: s 4(7A) (added by the Fisheries Act 1981 s 20(3)). A person guilty of an offence under s 4(7) (as substituted and amended) or s 4(7A) (as added) is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: s 11(1)(c) (substituted by the Fisheries Act 1981 s 24(1); and amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III).

7 Sea Fish (Conservation) Act 1967 s 4(6) (as substituted (see note 3 supra); and as amended (see note 5 supra)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: s 11(1)(a) (s 11(1)(a), (b) substituted by the Fisheries Act 1981 s 24(1); and amended by the Sea Fish (Conservation) Act 1992 s 5). The court by or before which a person is convicted of an offence under the Sea Fish (Conservation) Act 1967 s 4(6) (as substituted and amended) or s 4(9A) (as added) (see the text and note 11 infra) may order that the owner or any charterer of the vessel used to commit the offence be disqualified for a specified period from holding a licence in respect of that vessel: Sea Fish (Conservation) Act 1967 s 11(2)(c) (s 11(2), (3) substituted by the Fisheries Act 1981 s 24(1)). The court may also order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence: Sea Fish (Conservation) Act 1967 s 11(2)(d) (as so substituted). The court has no power, however, to order forfeiture under this provision if a fine is imposed under the Sea Fish (Conservation) Act 1967 s 11(3) (as substituted): see s 11(4). Any person guilty of an offence under s 4(6) (as substituted and amended) or s 4(9A) (as added) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) as so substituted). However, a person is not liable to a fine under s 11(3) (as substituted) if the court orders the forfeiture of the fish in respect of which the offence was committed under s 11(2) (as substituted) (see s 11(4)); but this provision is without prejudice to any other penalty (whether pecuniary or otherwise) to which he may be liable in respect of that offence (see s 11(5)). See also para 1015 post.

8 Ibid s 4(9) (as substituted (see note 3 supra); and amended by the Sea Fish (Conservation) Act 1992 s 1(1), (5)). If a licence is varied, revoked or suspended, the Secretary of State or the Welsh Ministers may refund the whole or part of any charge made for the licence, if it is appropriate in all the circumstances of the case: Sea Fish (Conservation) Act 1967 s 4(10) (as substituted: see note 3 supra).

9 For the meaning of 'sea fish' see para 969 note 3 ante.

10 For the meaning of 'fishing boat' see para 969 note 4 ante.

11 Sea Fish (Conservation) Act 1967 s 4(9A) (s 4(9A), (9B) added by the Fisheries Act 1981 s 20(4)). Where the Sea Fish (Conservation) Act 1967 s 4(9A) (as added) is not complied with in the case of any fishing boat, the master, the owner and any charterer is each guilty of an offence: s 4(9B) (as so added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: s 11(1)(b) (as substituted: see note 7 supra). As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

12 Ie a licence under the Sea Fish (Conservation) Act 1967 s 4 (as amended).

13 Ibid s 4B(1) (s 4B added by the Sea Fish (Conservation) Act 1992 s 4). Without prejudice to the generality of the Sea Fish (Conservation) Act 1967 s 4B(1) (as added), regulations may include provision: (1) for documents to be delivered, or notices given, to the nominees of persons to whom licences are granted; (2) for documents or notices to be treated as delivered or given if they are posted or otherwise communicated in

accordance with the regulations; (3) for notices to be given by publication in newspapers; (4) as to the transitional effects of variations: s 4B(2) (as so added). Regulations may make different provision for different cases: s 4B(3) (as so added). Regulations under s 4B (as added) are made by statutory instrument subject, in relation to England, to annulment in pursuance of a resolution of either House of Parliament: s 4B(4) (as so added). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. See the Sea Fishing (Licences and Notices) Regulations 1994, SI 1994/2813.

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **984 The granting of licences**

TEXT AND NOTES 1-11--The Secretary of State's function of granting licences under the Sea Fish (Conservation) Act 1967 s 4 is transferred to the Marine Management Organisation, and s 4 is accordingly further amended: see Marine and Coastal Access Act 2009 s 4. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

TEXT AND NOTES 5-7--See further Sea Fish (Conservation) Act 1967 s 4(6ZA) (added by Marine and Coastal Access Act 2009 s 197).

NOTES 6, 7, 11--Sea Fish (Conservation) Act 1967 s 11(1)(a), (c) further amended, s 11(3) amended, s 11(1)(b) repealed; Sea Fish (Conservation) Act 1992 s 5 partly repealed: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.

TEXT AND NOTE 13--See Marine and Coastal Access Act 2009 s 7.

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### **985. Appeals against restrictions on time spent at sea.**

Provision has been made for the appointment of a Sea Fish Licence Tribunal<sup>1</sup> for the purpose of reviewing a licence<sup>2</sup> that contains a condition limiting the time a vessel<sup>3</sup> may spend at sea<sup>4</sup>. The Secretary of State or the Welsh Ministers may make regulations as to the conduct of the tribunal<sup>5</sup>. The tribunal, acting consistently with the principles established for licensing<sup>6</sup> may dismiss an application or increase or decrease the time the vessel may spend at sea<sup>7</sup>. If the licence is varied by the tribunal or on appeal from it<sup>8</sup>, the Secretary of State or the Welsh Ministers must vary the licence accordingly<sup>9</sup>.

<sup>1</sup> Sea Fish (Conservation) Act 1967 s 4AA(1) (s 4AA added by the Sea Fish (Conservation) Act 1992 s 2). The tribunal must as soon as possible after the end of each 12-month period ending with 31 March send to the

Secretary of State and the Welsh Ministers a report on the exercise of its functions and, in relation to England, the Secretary of State must lay a copy of the report before each House of Parliament: Sea Fish (Conservation) Act 1967 s 4AA(8) (as so added). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As respects Wales, the Welsh Ministers must lay a copy of the report before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State and the Welsh Ministers see para 846 ante.

2       le a licence granted under the Sea Fish (Conservation) Act 1967 s 4 (as substituted and amended): see para 984 ante.

3       As to the meaning of 'vessel' see para 969 note 4 ante.

4       See the Sea Fish (Conservation) Act 1967 s 4AA(1), (2)(a) (as added: see note 1 supra). No licence containing such a condition may previously have been granted in respect of that vessel: s 4AA(2)(b) (as so added). The person to whom the licence is granted may make an application to the tribunal requesting it to review the time which according to the condition the vessel may spend at sea: s 4AA(2) (as so added).

5       See *ibid* s 4AA(3) (as added: see note 1 supra). These may relate to the quorum and procedure of the tribunal: see s 4AA(3) (as so added). The tribunal consists of members appointed by the Secretary of State and the Welsh Ministers and such number as they determine; provision must be made for the remuneration and expenses of the tribunal members and the staff and accommodation of the tribunal; and provision is made regarding the payment of expenses of the tribunal: see s 4AA(6), (7) (as so added). Regulations made under s 4AA (as added) are made by statutory instrument subject, in relation to England, to annulment in pursuance of a resolution of either House of Parliament: s 4AA(9) (as so added). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. At the date at which this volume states the law no such regulations had been made.

6       le the principles set out in any order made under the Sea Fish (Conservation) Act 1967 s 4(6C) (as added): see para 984 ante.

7       Ibid s 4AA(4) (as added: see note 1 supra).

8       There is a right of appeal from the tribunal to the High Court: see the Tribunals and Inquiries Act 1992 s 11(1), Sch 1 para 40A (added by the Sea Fish (Conservation) Act 1992 s 9).

9       Sea Fish (Conservation) Act 1967 s 4AA(5) (as added: see note 1 supra).

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **985 Appeals against restrictions on time spent at sea**

NOTE 8--Tribunals and Inquiries Act 1992 s 11(1) amended: Sea Fish (Conservation) Act 1992 s 9; Education Act 1993 s 181(2); SI 2001/3649, SI 2002/2217, SI 2008/2833, SI 2009/1307.

TEXT AND NOTE 9--In the Sea Fish (Conservation) Act 1967 s 4AA(5) the reference to the Minister who granted the licence is to be read, in the case of licences granted or treated as granted by the Secretary of State or the Marine Management Organisation, as a reference to the Marine Management Organisation: see Marine and Coastal Access Act 2009 s 5. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

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### ***C. LICENSING OF VESSELS RECEIVING TRANS-SHIPPED FISH***

#### **986. The making of orders.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order provide that within relevant British fishery limits<sup>2</sup>, or in any specified area within those limits, the receiving by any vessel<sup>3</sup>, whether British or foreign, of fish trans-shipped from any other vessel is prohibited unless authorised by a licence granted by the Secretary of State or the Welsh Ministers<sup>4</sup>.

Such an order may apply to the receiving of fish generally or it may be limited in scope<sup>5</sup>, and in either case the order may provide for exceptions from the prohibitions contained in it<sup>6</sup>.

Where any vessel is used in contravention of a prohibition imposed by such an order, the master<sup>7</sup>, the owner and any charterer is each guilty of an offence<sup>8</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 For the meaning of 'relevant British fishery limits' see para 980 note 7 ante. As to fishery limits see para 961 ante.

3 As to the meaning of 'vessel' see para 969 note 4 ante.

4 Sea Fish (Conservation) Act 1967 s 4A(1) (s 4A added by the Fisheries Act 1981 s 21(1); and the Sea Fish (Conservation) Act 1967 s 4A(1) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43). See the Receiving of Trans-shipped Sea Fish (Licensing) Order 1982, SI 1982/80 (amended by SI 1983/1139).

The Sea Fish (Conservation) Act 1967 s 4A (as added and amended), any other enactment which provides for regulating the catching or landing of sea fish, and any order or byelaw made at any time under any such enactment, do not restrict the carrying on of any operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, nor do they restrict the landing of sea fish caught in the course of any such operations: s 9(4), (5). The provisions of s 9(4) have effect in addition to, and not in derogation of, s 9(1)-(3) (s 9(1) as amended) (see paras 988, 989 note 6 post) and any express saving or exemption contained in such other enactment or in any order or byelaw made under an enactment to which s 9(4) applies: s 9(6). For this purpose, 'sea fish' includes salmon and migratory trout: s 9(7). As to the regulation of landing of foreign-caught sea fish see para 969 ante. As to further restrictions on landing and sale see para 988 post.

5 An order may be limited to the receiving of: (1) a specified description of fish; (2) fish caught by a specified method; (3) fish caught in a specified area; (4) fish caught or trans-shipped during a specified season of the year or other period; or (5) fish caught or received by vessels of a specified description, including vessels registered in a specified country: *ibid* s 4A(2) (as added: see note 4 supra).

6 *Ibid* s 4A(2) (as added: see note 4 supra). An order may authorise the making of a charge for a licence and, if it does so, it must specify a maximum charge and may specify different maxima in relation to different classes of licence: s 4A(4) (as so added).

7 As to the meaning of 'master' see para 980 note 17 ante.

8 Sea Fish (Conservation) Act 1967 s 4A(3) (as added: see note 4 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: s 11(1) (a) (substituted by the Fisheries Act 1981 s 24(1); and amended by the Sea Fish (Conservation) Act 1992 s 5). The court by or before which a person is convicted of such an offence may order that the owner or any

charterer of the vessel used to commit the offence be disqualified for a specified period from holding a licence in respect of that vessel: Sea Fish (Conservation) Act 1967 s 11(2)(c) (s 11(2), (3) substituted by the Fisheries Act 1981 s 24(1)). Any person guilty of an offence under the Sea Fish (Conservation) Act 1967 s 4A(3) (as added) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) as so substituted). See also para 1015 post. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

## **UPDATE**

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **986 The making of orders**

TEXT AND NOTES--The Secretary of State's function of granting licences under the Sea Fish (Conservation) Act 1967 s 4A is transferred to the Marine Management Organisation, and s 4A is accordingly further amended: see Marine and Coastal Access Act 2009 s 6. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 4--The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1)-(4) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 8--Sea Fish (Conservation) Act 1967 s 11(1)(a) further amended, s 11(3) amended, Sea Fish (Conservation) Act 1992 s 5 partly repealed: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/C. LICENSING OF VESSELS RECEIVING TRANS-SHIPPED FISH/987. The granting of licences.

### **987. The granting of licences.**

A licence<sup>1</sup> is granted to the owner or charterer in respect of a named vessel<sup>2</sup> and may authorise the receiving of fish generally or may confer limited authority by reference to, in particular: (1) the area within which the fish was caught or is trans-shipped; (2) the periods, times or particular voyages during which the fish was caught or is trans-shipped; (3) the descriptions and quantities of fish that may be received; or (4) the description of vessel or method by which the trans-shipped fish was caught<sup>3</sup>. The licensing power may be exercised so as to limit the number of vessels, or of any description of vessel (including vessels or any description of vessel registered in a specified country) engaged in receiving fish to such an extent as appears to the Secretary of State or the Welsh Ministers<sup>4</sup> necessary or expedient for the regulation of trans-shipment<sup>5</sup>.

A licence may authorise the receiving of fish either unconditionally or subject to such conditions as the Secretary of State considers or the Welsh Ministers consider to be necessary or expedient for the regulation of trans-shipment<sup>6</sup>. In particular, a licence may contain conditions as to the treatment on board the vessel of the fish received by it<sup>7</sup>. If a licence condition is broken, the master, the owner and any charterer is each guilty of an offence<sup>8</sup>.

Any person who for the purpose of obtaining a licence furnishes information which he knows to be false in a material particular, or recklessly furnishes information which is false in a material particular, is guilty of an offence<sup>9</sup>.

Any licence may be varied and may be revoked or suspended if it appears to the Secretary of State or the Welsh Ministers to be necessary or expedient for the regulation of trans-shipment or to be appropriate in a case where there is a contravention of a prohibition imposed by an order or a contravention of a condition of the licence<sup>10</sup>.

The Secretary of State and the Welsh Ministers may make arrangements for any of the licensing powers<sup>11</sup> to be exercised by other persons on his or their behalf<sup>12</sup>.

The Secretary of State and the Welsh Ministers may by regulations make provision as to the manner in which a licence<sup>13</sup> is to be granted, or a variation, revocation or suspension effected, and the time when a licence or a variation, suspension or revocation is to have effect<sup>14</sup>.

1       Ie a licence under the Sea Fish (Conservation) Act 1967 s 4A (as added and amended): see para 986 ante.

2       As to the meaning of 'vessel' see para 969 note 4 ante.

3       Sea Fish (Conservation) Act 1967 s 4A(5) (s 4A added by the Fisheries Act 1981 s 21(1)). See the Receiving of Trans-shipped Sea Fish (Licensing) Order 1982, SI 1982/80 (amended by SI 1983/1139).

4       As to the Secretary of State and the Welsh Ministers see para 846 ante.

5       Sea Fish (Conservation) Act 1967 s 4A(9) (as added: see note 3 supra).

6       Ibid s 4A(6) (as added: see note 3 supra).

7       Ibid s 4A(6) (as added: see note 3 supra). Different conditions may be imposed with respect to different vessels or vessels of different descriptions: s 4A(6) (as so added). Where automatic recording equipment is used in accordance with a condition included in a licence by virtue of s 4A(6) (as added), or is used to record information transmitted or derived from equipment used in accordance with such a condition, any record produced by means of the automatic recording equipment is evidence of the matters appearing from the record for the purpose of proceedings for an offence under s 4A(6) (as added): s 4C(1) (added by the Sea Fish (Conservation) Act 1992 s 4).

8       Sea Fish (Conservation) Act 1967 s 4A(6) (as added: see note 3 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: s 11(1) (a) (substituted by the Fisheries Act 1981 s 24(1); and amended by the Sea Fish (Conservation) Act 1992 s 5). The court by or before which a person is convicted of such an offence may order that the owner or any charterer of the vessel used to commit the offence be disqualified for a specified period from holding a licence in respect of that vessel: Sea Fish (Conservation) Act 1967 s 11(2)(c) (s 11(2), (3) substituted by the Fisheries Act 1981 s 24(1)). Any person guilty of an offence under the Sea Fish (Conservation) Act 1967 s 4A(6) (as added) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) as so substituted). See also para 1015 post.

9       Ibid s 4A(8) (as added: see note 3 supra). The Secretary of State or the Welsh Ministers may require the master, the owner and any charterer of the vessel named in the licence and any agent so named to provide such information, in such form, as may be directed; and a person who fails without reasonable excuse to comply with such a requirement is guilty of an offence: s 4A(7) (as so added; and amended by the Sea Fish (Conservation) Act 1992 s 3(1), (2)). A person guilty of an offence under the Sea Fish (Conservation) Act 1967 s 4A(7) (as added and amended) or s 4A(8) (as added) is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: s 11(1)(c) (substituted by the Fisheries Act

1981 s 24(1); and amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III). As to the statutory maximum see para 849 note 15 ante.

10 Sea Fish (Conservation) Act 1967 s 4A(10) (as added (see note 3 supra); and amended by the Sea Fish (Conservation) Act 1992 s 3(1), (3)). If a licence is varied, revoked or suspended, any charge made for it may be refunded if the Secretary of State considers or the Welsh Ministers consider it appropriate in all the circumstances of the case: Sea Fish (Conservation) Act 1967 s 4A(11) (as so added).

11 The power to make orders under *ibid* s 4A(1) (as added and amended) is excluded: see s 4A(12) (as added: see note 3 supra).

12 *Ibid* s 4A(12) (as added: see note 3 supra).

13 *Ie* a licence under *ibid* s 4A (as added and amended).

14 *Ibid* s 4B(1) (added by the Sea Fish (Conservation) Act 1992 s 4). See further para 984 note 13 ante. As to the communication and giving of notices and the time at which they have effect see the Sea Fishing (Licences and Notices) Regulations 1994, SI 1994/2813.

## UPDATE

### 969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 987 The granting of licences

TEXT AND NOTES 1-12--The Secretary of State's function of granting licences under the Sea Fish (Conservation) Act 1967 s 4A is transferred to the Marine Management Organisation, and s 4A is accordingly further amended: see Marine and Coastal Access Act 2009 s 6. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTES 8, 9--Sea Fish (Conservation) Act 1967 s 11(1)(a), (c) further amended, s 11(3) amended, Sea Fish (Conservation) Act 1992 s 5 partly repealed: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.

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## D. RESTRICTIONS ON CATCH

### 988. Size limits for sea fish.

Subject to certain statutory provisions<sup>1</sup>, no person may, in England and Wales, land, sell, expose or offer for sale, or have in his possession for the purpose of sale, any sea fish<sup>2</sup> of any description, being a fish of a smaller size than such size as may be prescribed by order in relation to sea fish of that description<sup>3</sup>. Sea fish of any description which are of less than the



minimum size prescribed by order in relation to sea fish of that description may not be carried, whether within or outside relevant British fishery limits<sup>4</sup>, on a relevant British fishing boat<sup>5</sup>. An order<sup>6</sup> may prohibit the carrying by any Scottish or foreign fishing boat<sup>7</sup> in waters adjacent to the United Kingdom<sup>8</sup> and within relevant British fishery limits of sea fish of any description prescribed by the order which are of less than the minimum size so prescribed in relation to sea fish of that description<sup>9</sup>. An order<sup>10</sup> may confer exemptions from any prohibition imposed by these provisions, and any such exemption may be general or subject to conditions and may relate to all fish to which the order applies or to fish of any specified description<sup>11</sup>.

Any person who contravenes these prohibitions in respect of undersized sea fish<sup>12</sup> is guilty of an offence<sup>13</sup>. If any undersized sea fish are carried on a relevant British fishing boat or a Scottish fishing boat<sup>14</sup> the master<sup>15</sup>, the owner and any charterer is each guilty of an offence<sup>16</sup>.

It is also an offence for any person in England and Wales to have in his possession any fish prohibited under these provisions from being sold in England and Wales<sup>17</sup> for the purpose of processing<sup>18</sup> or otherwise using it in the course of any business<sup>19</sup>. Where, however, it appears to an officer authorised in that behalf by the Secretary of State or the Welsh Ministers that any fish which have been caught are so prohibited from being sold<sup>20</sup>, the officer may grant to any person such exemption from the prohibition<sup>21</sup> as the officer considers requisite to enable the fish to be disposed of<sup>22</sup>.

1       le subject to the provisions of the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended) (see the text and notes 1-16 infra) and s 9(1) (as amended) (see note 3 infra).

2       For the meaning of 'sea fish' see para 969 note 3 ante.

3       Sea Fish (Conservation) Act 1967 s 1(1), (2) (s 1 substituted by the Fisheries Act 1981 s 19(1); and the Sea Fish (Conservation) Act 1967 s 1(1), (2), (3), (5), (8) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1)-(3)). As to the making of such an order see para 959 notes 26-28 ante. As to publication of a notice stating that an order has been made see para 969 note 2 ante. As to the orders made see paras 989, 1040 post.

Different sizes may be prescribed for the purposes of the Sea Fish (Conservation) Act 1967 s 1(1)-(3) (as substituted and amended); and an order under s 1(1) (as substituted and amended) may prescribe different sizes in relation to different areas and in relation to fish of different sexes: s 1(4) (as so substituted). Where an order under s 1(1) (as substituted and amended) prescribes a size for fish of any description (or of any description and sex), whether generally or in relation to any particular area, then, except so far as provision to the contrary is made by such an order, a person who in England and Wales or, as the case may be, in that area lands a part of a fish of that description (or of that description and sex), subject to s 9(1) (as amended) (see note 5 infra), is deemed to contravene s 1(1) (as substituted and amended) if the part is of a smaller size than the one so prescribed: s 1(5) (as so substituted and amended).

Nothing in s 1(1), (5) (as substituted and amended) is to restrict the landing of fish taken in the course of fishing operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation: s 9(1) (amended by the Fisheries Act 1981 ss 19(2)(b), 46(6)). See also note 5 infra. As to the Secretary of State and the Welsh Ministers see para 846 ante.

The following orders have been made: the Undersized Crabs Order 1986, SI 1986/497 (amended by SI 1989/2443; revoked in relation to England); the Undersized Velvet Crabs Order 1989, SI 1989/919; the Undersized Bass Order 1989, SI 1989/1285; the Undersized Lobsters Order 1993, SI 1993/1178 (revoked in relation to England); the Undersized Spider Crabs Order 2000, SI 2000/1502; the Undersized Lobsters Order 2000, SI 2000/1503; the Undersized Edible Crabs Order 2000, SI 2000/2029; the Undersized Spider Crabs (Wales) Order 2002, SI 2002/1897; the Scallop Fishing Order 2004, SI 2004/12; and the Scallop Fishing (Wales) Order 2005, SI 2005/1717.

As to the prohibition on the landing of sea fish caught in specified waters see para 992 post. As to the regulation of the landing of foreign-caught sea fish see para 969 ante. As to the sale of fish generally see para 876 note 4 ante.

4       For the meaning of 'relevant British fishery limits' see para 980 note 7 ante. As to fishery limits see para 961 ante.

5       Sea Fish (Conservation) Act 1967 s 1(3) (as substituted and amended: see note 3 supra). For this purpose, 'relevant British fishing boat' means a fishing boat which is not a Scottish fishing boat and which either is registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see

SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq) or is owned wholly by persons qualified to own British ships for the purposes of Pt II (as amended): Sea Fish (Conservation) Act 1967 s 1(9) (s 1 as so substituted; and s 1(9) further substituted by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 38; and amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1)-(3)). For the meaning of 'fishing boat' see para 969 note 4 ante.

Nothing in the Sea Fish (Conservation) Act 1967 s 1(3) (as substituted and amended) applies in relation to fishing operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation or for the purpose of transplanting fish from one fishing ground to another: s 9(2).

The effect of s 1(3) (as substituted and amended) is that any undersized fish which are caught must be returned to the sea, unless one of the exceptions applies.

6       Ie an order under *ibid* s 1(3) (as substituted and amended).

7       For this purpose, 'foreign fishing boat' means any fishing boat other than a relevant British fishing boat (see note 4 *supra*) or a Scottish fishing boat: *ibid* s 1(9) (as substituted and amended: see note 5 *supra*). For the meaning of 'Scottish fishing boat' see para 969 note 4 ante.

8       For the meaning of 'United Kingdom' see para 843 note 1 ante.

9       Sea Fish (Conservation) Act 1967 s 1(3) (as substituted and amended: see note 3 *supra*).

10       Ie an order under *ibid* s 1 (as substituted and amended).

11       *Ibid* s 1(6) (as substituted: see note 3 *supra*).

12       Ie any person who contravenes *ibid* s 1(1), (2) (as substituted and amended): see the text and notes 1-3 *supra*.

13       *Ibid* s 1(7) (as substituted: see note 3 *supra*). Any person guilty of an offence under s 1 (as substituted and amended) is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: s 11(1)(c) (s 11(1)-(3) substituted by the Fisheries Act 1981 s 24(1); and the Sea Fish (Conservation) Act 1967 s 11(1)(c) amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III). As to the statutory maximum see para 849 note 15 ante. The court by or before which a person is convicted of such an offence may order the forfeiture of any fish in respect of which the offence was committed: Sea Fish (Conservation) Act 1967 s 11(2)(a) (as so substituted). Any person guilty of an offence under s 1 (as substituted and amended) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) as so substituted). However, a person is not liable to a fine under s 11(3) (as substituted) if the court orders the forfeiture of the fish in respect of which the offence was committed under s 11(2) (as substituted) (see s 11(4)); but this provision is without prejudice to any other penalty (whether pecuniary or otherwise) to which he may be liable in respect of that offence (see s 11(5)). See also para 1015 post. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

14       Ie if the Sea Fish (Conservation) Act 1967 s 1(3) (as substituted and amended) is contravened: see the text and notes 4-9 *supra*.

15       As to the meaning of 'master' see para 980 note 17 ante.

16       Sea Fish (Conservation) Act 1967 s 1(8) (as substituted and amended: see note 3 *supra*). See note 13 *supra*.

17       Ie under *ibid* s 1(2) (as substituted and amended) (see the text and notes 1-3 *supra*): s 2(2) (amended by the Fisheries Act 1981 ss 19(2)(a), 46(6)).

18       'Processing', in relation to fish, includes preserving or preparing fish or producing any substance or article from fish, by any method for human or animal consumption: Sea Fish (Conservation) Act 1967 s 22(1).

19       *Ibid* s 2(1), (4) (s 2(1) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: Sea Fish (Conservation) Act 1967 s 11(1)(c) (as substituted and amended: see note 13 *supra*).

20       Ie prohibited under *ibid* s 1(2) (as substituted and amended) (see the text and notes 1-3 *supra*).

21       Ie the prohibition in *ibid* s 2(1) (as amended): see the text to notes 17-19 *supra*.

22 Ibid s 2(3).

## UPDATE

### **969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **988 Size limits for sea fish**

TEXT AND NOTES 1-16--Sea Fish (Conservation) Act 1967 ss 1, 11 further amended: Marine and Coastal Access Act 2009 s 194, Sch 15 paras 1, 4, Sch 22 Pt 5.

NOTES 3, 5--The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1), (2) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 3--SI 2005/1717 revoked: SI 2009/2721.

NOTE 5--Merchant Shipping Act 1995 Sch 13 para 38 partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

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### **989. Power to restrict fishing for sea fish.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may by order<sup>2</sup> prohibit in any area specified in the order and either for a period so specified or without limitation of time: (1) all fishing for sea fish<sup>3</sup>; (2) fishing for any description of sea fish specified in the order; or (3) fishing for sea fish, or for any description of sea fish specified in the order, by any method so specified, by any fishing boat<sup>4</sup> to which the prohibition applies; and where any fishing boat is used in contravention of any prohibition imposed by such an order, the master<sup>5</sup>, the owner and any charterer is each guilty of an offence<sup>6</sup>.

Such an order may make different provision in relation to fishing boats of different descriptions<sup>7</sup>. Any prohibition imposed by an order may be made so as to have effect at all times while the order is in force or at such times as (whether by reference to particular months, weeks, days or hours, or to any combination thereof) are specified in the order<sup>8</sup>.

Where an order under these provisions<sup>9</sup> relates to a specified description of sea fish, and, in the course of any fishing operations in a specified area and at a time when a prohibition relating to sea fish of that description has effect in that area, any sea fish of that description (or, if the prohibition applies only to fishing for sea fish of that description by a specified method, any sea

fish of that description caught by that method) are taken on board a fishing boat to which the order applies<sup>10</sup>, those sea fish must generally<sup>11</sup> be returned to the sea forthwith<sup>12</sup>. Where this obligation is not complied with in the case of any fishing boat, the master, the owner and any charterer is each guilty of an offence<sup>13</sup>.

The power to restrict fishing set out above<sup>14</sup> may also be exercised for marine environmental purposes<sup>15</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the power to make orders under the Sea Fish (Conservation) Act 1967 s 5 (as substituted and amended) see para 959 ante.

3 For the meaning of 'sea fish' see para 969 note 3 ante.

4 For the meaning of 'fishing boat' see para 969 note 4 ante.

5 As to the meaning of 'master' see para 980 note 17 ante.

6 Sea Fish (Conservation) Act 1967 s 5(1) (substituted by the Fisheries Act 1981 s 22(1)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine: Sea Fish (Conservation) Act 1967 s 11(1) (substituted by the Fisheries Act 1981 s 24(1)). See further note 13 infra. As to enforcement see para 1006 post. Neither a prohibition imposed by an order under the Sea Fish (Conservation) Act 1967 s 5 (as amended), nor the obligation imposed by s 5(6) (as amended) (see the text and notes 9-12 infra), applies in relation to fishing operations conducted under the authority of the Secretary of State or the Welsh Ministers for the purpose of scientific investigation or for the purpose of transplanting fish from one fishing ground to another: s 9(3). Section 5 (as amended), any other enactment which provides for regulating the catching or landing of sea fish, and any order or byelaw made at any time under any such enactment, do not restrict the carrying on of any operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, nor do they restrict the landing of sea fish caught in the course of any such operations: s 9(4), (5). The provisions of s 9(4) have effect in addition to, and not in derogation of, s 9(1)-(3) (s 9(1) as amended) and any express saving or exemption contained in such other enactment or in any order or byelaw made under an enactment to which s 9(4) applies: s 9(6). For this purpose, 'sea fish' includes salmon and migratory trout: s 9(7). As to the regulation of landing of foreign-caught sea fish see para 969 ante. As to further restrictions on landing and sale see para 988 ante.

The following orders have been made under s 5 (as amended): the Sea Fishing (North Norfolk Coast) (Prohibition of Trawling) Order 1972, SI 1972/1662; the Salmon and Migratory Trout (Prohibition of Fishing) Order 1972, SI 1973/188 (amended by SI 1983/59); the Salmon and Migratory Trout (North-East Atlantic) Order 1972, SI 1973/189 (amended by SI 1983/59); the Salmon and Migratory Trout (Prohibition of Fishing) (No 2) Order 1972, SI 1973/207; the Scallops (Irish Sea) (Prohibition of Fishing) Order 1984, SI 1984/1523 (amended by SI 1986/988; revoked in relation to Wales); the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989, SI 1989/1284 (amended by SI 1999/74); the Bass (Specified Areas) (Prohibition of Fishing) Order 1990, SI 1990/1156 (amended by SI 1999/75); the Razor Shells, Trough Shells and Carpet Shells (Specified Sea Area) (Prohibition of Fishing) Order 1998, SI 1998/1276; the Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000, SI 2000/874; the Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002, SI 2002/676; the Shellfish (Specified Sea Area) (Prohibition of Fishing Methods) (Wales) Order 2003, SI 2003/607; the Prohibition of Fishing with Multiple Trawls Order 2003, SI 2003/1559; the Prohibition of Fishing with Multiple Trawls (Wales) Order 2003, SI 2003/1855; the Shrimp Fishing Nets (Wales) Order 2003, SI 2003/3035; the South-west Territorial Waters (Prohibition of Pair Trawling) Order 2004, SI 2004/3397 (amended by SI 2005/49); and the Scallop Fishing (Wales) Order 2005, SI 2005/1717.

7 Sea Fish (Conservation) Act 1967 s 5(2) (substituted by the Fisheries Act 1981 s 22(1)).

8 Sea Fish (Conservation) Act 1967 s 5(5).

9 Ie an order under *ibid* s 5 (as amended).

10 An order under *ibid* s 5 (as amended) relating to an area outside relevant British fishery limits does not apply to any fishing boat other than: (1) a relevant British fishing boat registered in the United Kingdom; or (2) in so far as the order relates to fishing for salmon or migratory trout, a fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq); but an order under the Sea Fish (Conservation) Act 1967 s 5 (as amended) relating to an area within those limits may apply to any fishing boat: s 5(8) (substituted by the Fisheries Act 1981 s 22(3); and amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 38(b); and the Scotland Act 1998 (Consequential

Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2)). For the meaning of 'United Kingdom' see para 843 note 1 ante. For the meaning of 'relevant British fishing boat' see para 969 note 4 ante. 'British-owned', in relation to a fishing boat, means owned by a person who is for the purposes of the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq) a person qualified to own a British ship, or owned by two or more persons any one of whom is for those purposes a person so qualified: Sea Fish (Conservation) Act 1967 s 22(1) (definition substituted by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 38(c)).

11 le except where an exemption applies by virtue of the Sea Fish (Conservation) Act 1967 s 9 (as amended) (see note 6 supra) and except where the order otherwise provides.

12 Ibid s 5(6) (amended by the Fisheries Act 1981 s 22(2)).

13 Sea Fish (Conservation) Act 1967 s 5(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: s 11(1)(b) (substituted by the Fisheries Act 1981 s 24(1)). The court by which a person is convicted of an offence may, in the case of an offence under the Sea Fish (Conservation) Act 1967 s 5(1) (as substituted) or s 5(6) (as amended), order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence: s 11(2)(d) (substituted by the Fisheries Act 1981 s 24(1)). As to powers of seizure see para 936 ante. The court has no power, however, to order forfeiture under this provision if a fine is imposed under the Sea Fish (Conservation) Act 1967 s 11(3) (as substituted): see s 11(4).

Any person guilty of an offence under s 5(1) (as substituted) or s 5(6) (as amended) is, in addition to any other penalty (whether pecuniary or otherwise) to which he is liable in respect of that offence under s 11 (as amended) or any other enactment, liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed: see s 11(3), (5) (s 11(3) substituted by the Fisheries Act 1981 s 24(1)). However, a person is not liable to a fine under the Sea Fish (Conservation) Act 1967 s 11(3) (as substituted) if the court orders the forfeiture of the fish in respect of which the offence was committed under s 11(2) (as substituted) (see s 11(4)); but this provision is without prejudice to any other penalty (whether pecuniary or otherwise) to which he may be liable in respect of that offence (see s 11(5)). As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

14 le the power to make an order under the Sea Fish (Conservation) Act 1967 s 5 (as amended): see the text and notes 1-13 supra.

15 Ibid s 5A(1) (s 5A added by the Environment Act 1995 s 103(1)). 'Marine environmental purposes' means the purposes: (1) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or (2) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment: Sea Fish (Conservation) Act 1967 s 5A(3) (as so added). The power to make an order under s 5 (as amended) (see the text and notes 1-13 supra) by virtue of s 5A (as added) is in addition to, and not in derogation from, the power to make an order under s 5 (as amended) otherwise than by virtue of s 5A (as added): s 5A(2) (as so added).

## UPDATE

### 969-989 Regulation of the landing of foreign-caught fish ... Power to restrict fishing for sea fish

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 989 Power to restrict fishing for sea fish

TEXT AND NOTES 6-8--Sea Fish (Conservation) Act 1967 s 5(1) further substituted, s 5(1A)-(1C) added, s 5(2), (5) amended: Marine and Coastal Access Act 2009 s 198(2), Sch 15 para 3(2), (3).

NOTE 6--In exercise of the powers conferred on them, the Secretary of State has made the Tope (Prohibition of Fishing) Order 2008, SI 2008/691, and the Welsh Ministers have made the Tope (Prohibition of Fishing) (Wales) Order 2008, SI 2008/1438, which provide (1) that fishing for tope, other than by rod and line is prohibited; (2) that trans-shipment of tope is prohibited; (3) that no person may land tope caught by rod and line, or beheaded tope; and (4) for the powers of British sea-fishery officers. The Welsh Ministers have also made the Scallop Fishing (Wales) (No 2) Order 2010, SI 2010/269.

SI 2003/3035 replaced: Shrimp Fishing Nets (Wales) Order 2008, SI 2008/1811 (amended by SI 2008/3144). SI 2005/1717 revoked: SI 2009/2721.

The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1)-(4) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 10--Sea Fish (Conservation) Act 1967 s 5(8) further substituted, s 5(9) added: Marine and Coastal Access Act 2009 s 198(3).

TEXT AND NOTE 12--Sea Fish (Conservation) Act 1967 s 5(6) further amended, s 5(6A) added, Fisheries Act 1981 s 22(2) partly repealed: Marine and Coastal Access Act 2009 Sch 15 para 3(4), (5), Sch 22 Pt 5.

NOTE 13--Sea Fish (Conservation) Act 1967 s 11(3) amended, s 11(1)(b) repealed: Marine and Coastal Access Act 2009 Sch 15 para 4, Sch 22 Pt 5.

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## **990. Regulation of conduct of fishing operations.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may, whenever it appears to them necessary or expedient, by order<sup>2</sup> make provision for regulating the conduct of, and safeguarding, fishing and ancillary operations, including provision with respect to the identification and marking of fishing boats<sup>3</sup> and fishing gear<sup>4</sup>. Except as provided by the order, such an order applies: (1) to all relevant British fishing boats<sup>5</sup> and things done by such boats and their crews wherever they may be<sup>6</sup>; and (2) to all Scottish or foreign fishing boats<sup>7</sup>, and things done by such boats and their crews, in waters within relevant British fishery limits<sup>8</sup>.

Contravention of a provision of an order in the case of a fishing boat or its crew renders any person prescribed by the order in relation to that provision, being one or more of the master<sup>9</sup>, the owner or any charterer, guilty of an offence<sup>10</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the making of orders under the Sea Fisheries Act 1968 see s 18 (as amended); and para 959 notes 26-28 ante. The provisions of an order under s 5 (as amended) are to be taken to be in addition to and not to derogate from the provisions of any other enactment or any instrument made under any other enactment: s 5(5). At the date at which this volume states the law no such order had been made.

3 'Fishing boat' means any vessel for the time being employed in fishing operations or any ancillary operations: *ibid* s 19(1).

4 *Ibid* s 5(1) (amended by the Fishery Limits Act 1976 s 4(1)).

5 'Relevant British fishing boat' means a British fishing boat which is not a Scottish fishing boat; and 'Scottish fishing boat' means a fishing vessel which is registered in the register maintained under the Merchant Shipping Act 1995 s 8 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging: Sea Fisheries Act 1968 s 19(1) (definitions added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (5)). 'British fishing boat' means a fishing boat which either is registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq) or is wholly British owned; 'wholly British owned' means wholly owned by persons qualified to own British ships for the purposes of Pt II (as amended): Sea Fisheries Act 1968 s 19(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 43(c)).

6 Sea Fisheries Act 1968 s 5(2)(a) (amended by the Fisheries Limits Act 1976 s 4(2); and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (2)).

7 'Foreign fishing boat' means any fishing boat other than a relevant British fishing boat or a Scottish fishing boat (see note 5 supra): Sea Fisheries Act 1968 s 19(1) (definition added by the Merchant Shipping Act 1995 Sch 13 para 43(c); and amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (5)).

8 Sea Fisheries Act 1968 s 5(2)(b) (substituted by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (2)). 'Relevant British fishery limits' means British fishery limits so far as they do not relate to the Scottish zone; and 'the Scottish zone' means the sea within British fishery limits (ie the limits set by or under the Fishery Limits Act 1976 s 1: see para 961 ante) which is adjacent to Scotland: Sea Fisheries Act 1968 s 19(1) (definitions added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (5)); Scotland Act 1998 s 126(1).

The Secretary of State and Welsh Ministers may by order make such provision as is mentioned in the Sea Fisheries Act 1968 s 5(1) (as amended) (see the text and notes 1-4 supra) with respect to foreign fishing boats which, in pursuance of an arrangement for the time being in force between the United Kingdom government and the government of any other country, enter relevant British fishery limits for the purpose of carrying on fishing or ancillary operations, including provisions regulating the movements of those boats within those limits: s 5(3) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 48(1), (2)).

9 In relation to any fishing boat, 'master' includes the person for the time being in command or charge of the boat: Sea Fisheries Act 1968 s 19(1).

10 Ibid s 5(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: s 5(4) (amended by the Fishery Limits Act 1976 s 5, Sch 1 para 3(1); and by virtue of the Criminal Justice Act 1991 s 17(3), Sch 4 Pt III). As to enforcement by sea fishery officers see paras 1002-1003 post; as to recovery of fines and compensation see para 1017 post; and as to jurisdiction to try the offence see para 1019 post.

## UPDATE

### 990 Regulation of conduct of fishing operations

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/E. LANDING OF FISH/991. Import licensing.

## E. LANDING OF FISH

### 991. Import licensing.

Under provisions at present suspended it is unlawful to land in the United Kingdom<sup>1</sup> except under licence any sea fish<sup>2</sup> other than sea fish which have been taken by a fishing boat registered in the United Kingdom, the Isle of Man, the Channel Islands or any other part of Her Majesty's dominions, and which have been brought to land in the United Kingdom without having been previously landed in any country outside the United Kingdom<sup>3</sup>. In addition, the import of live fish both from European Union countries and from elsewhere are subject to restrictions<sup>4</sup>.

1 For the meaning of 'United Kingdom' see para 843 note 1 ante.

2 I.e. fish (whether fresh or cured) of any kind found in the sea except lobsters, crabs, shrimps, prawns, oysters, mussels, cockles and any other kind of shellfish, eels, fish of the salmon species, migrating trout, wet salted split cod-fish, salted herrings, dried fish whether salted or not, or canned fish: Sea fishing Industry (Regulation of Landing) Order 1936, SI 1936/697, art 7. See note 3 infra.

3 Ibid art 2. As to the power under which this order was made see para 969 ante. The operation of the order has been suspended by the Import of Goods (Control) Order 1954, SI 1954/23 (amended by SI 1954/627; SI 1975/2117; SI 1978/806), which places a general prohibition on the import of goods into the United Kingdom without licence: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 996 et seq. The importation of fish may be restricted under the Endangered Species (Import and Export) Act 1976 s 1, Sch 1 (as substituted), although no fish are at present specified: see ANIMALS vol 2 (2008) PARA 966.

4 See para 882 et seq ante.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/E. LANDING OF FISH/992. Prohibition on the landing of sea fish caught in specified waters.

## **992. Prohibition on the landing of sea fish caught in specified waters.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order<sup>2</sup> prohibit the landing in England and Wales and Northern Ireland, or the trans-shipment within relevant British fishery limits<sup>3</sup>, of sea fish<sup>4</sup>, or any particular description of sea fish, caught in any waters specified in the order<sup>5</sup>. Any prohibition imposed by such an order in relation to sea fish, or any particular description of sea fish, caught in any waters specified in the order may be so imposed either for a specified period or without limitation of time and either free from, or subject to, all or any, or any combination of, certain limitations<sup>6</sup>. Where such an order is made, the enactments relating to customs<sup>7</sup> apply accordingly, but no steps under those enactments may be taken<sup>8</sup> by any officer or revenue and customs except at the request of an officer of the Secretary of State or the Welsh Ministers<sup>9</sup>.

If sea fish are landed from a vessel<sup>10</sup> or trans-shipped into or from a vessel, in contravention of such an order, the master<sup>11</sup>, the owner and any charterer of the vessel is each guilty of an offence<sup>12</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 Such an order is made under the Sea Fish (Conservation) Act 1967 s 6 (as amended), and must be made by statutory instrument which, in relation to England, is subject to annulment in pursuance of a resolution of either House of Parliament: see s 20(2), (5) (as amended); and para 959 ante. For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. The orders may be varied or revoked by subsequent order: see the Sea Fish (Conservation) Act 1967 s 20(1); and para 959 text and notes 22-25 ante. As to publication of notice of the order see para 969 note 2 ante. The following orders have been made under s 6 (as amended): the Salmon and Migratory Trout (Restrictions on Landing) Order 1972, SI 1972/1966 (amended by SI 1975/639; SI 1983/58); the



Sea Fishing (Specified Manx Waters) (Restrictions on Landing) Order 1990, SI 1990/2051; the Sea Fishing (Specified Western Waters) (Restrictions on Landing) Order 1990, SI 1990/2052 (amended by SI 1991/2565); the Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000, SI 2000/874; the Undersized Edible Crabs Order 2000, SI 2000/2029; and the Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002, SI 2002/676. Further orders restrict landing certain fish or fishing in certain areas so as to comply with European Union legislation: see the Sea Fishing (Enforcement of Community Conservation Measures) Order 2000, SI 2000/1081 (as amended); the Sea Fishing (Enforcement of Community Conservation Measures) (Wales) Order 2000, SI 2000/2230 (as amended); and para 796 ante. British sea fishery officers have powers of enforcement: see eg the Salmon and Migratory Trout (Enforcement) Order 1973, SI 1973/210, art 4. As to the powers of British sea fishery officers see para 1002 et seq post.

3 For the meaning of 'relevant British fishery limits' see para 980 note 7 ante.

4 In the Sea Fish (Conservation) Act 1967 ss 6, 7 (both as amended), 'sea fish' includes salmon and migratory trout: s 6(6). For the meaning of 'sea fish' generally, and for the meanings of 'salmon' and 'migratory trout', see para 969 note 3 ante.

5 Ibid s 6(1), (1A) (s 6(1A) added by the Fisheries Act 1981 s 23(2); and the Sea Fish (Conservation) Act 1967 s 6(1), (1A) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2), (6)).

The Sea Fish (Conservation) Act 1967 s 6 (as amended), any other enactment which provides for regulating the catching or landing of sea fish, and any order or byelaw made at any time under any such enactment, do not restrict the carrying on of any operations which, under the authority of the Secretary of State or the Welsh Ministers, are conducted for the purpose of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, nor do they restrict the landing of sea fish caught in the course of any such operations: s 9(4), (5). The provisions of s 9(4) have effect in addition to, and not in derogation of, s 9(1)-(3) (s 9(1) as amended) (see paras 988, 989 note 6 ante) and any express saving or exemption contained in such other enactment or in any order or byelaw made under an enactment to which s 9(4) applies: s 9(6). For this purpose, 'sea fish' includes salmon and migratory trout: s 9(7). As to the regulation of landing of foreign-caught sea fish see para 969 ante. As to further restrictions on landing and sale see para 988 ante.

6 Ibid s 6(2). The limitations must be limitations whereby the prohibition has effect in relation to sea fish, or sea fish of the specified description (as the case may be): (1) caught while in a condition specified in the order and not while in any other condition, or caught while in any condition except a condition so specified; (2) caught by a method specified in the order and not by any other method, or caught by any method except a method so specified; (3) caught at any such times as (whether by reference to particular months, weeks, days or hours, or to any combination of such periods) are specified in the order: s 6(2)(a)-(c). Without prejudice to s 6(2), any prohibition imposed by an order under s 6 (as amended) may be imposed subject to such exceptions as may be specified in the order: s 6(3).

7 The principal statute is the Customs and Excise Management Act 1979: see generally CUSTOMS AND EXCISE. As to value added tax on the supply of fish and the circumstances in which such supply is zero-rated see para 843 ante.

8 Ie no such steps may be taken for the purposes of the Sea Fish (Conservation) Act 1967 s 6 (as amended).

9 Ibid s 6(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)). As to Her Majesty's Revenue and Customs see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq.

10 As to the meaning of 'vessel' see para 969 note 4 ante.

11 As to the meaning of 'master' see para 980 note 17 ante.

12 Sea Fish (Conservation) Act 1967 s 6(5), (5A) (s 6(5) amended, and s 6(5A) added, by the Fisheries Act 1981 s 23(3)). A person guilty of the offence of trans-shipping into a vessel is liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine; and a person guilty of landing fish or trans-shipping from a vessel is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: Sea Fish (Conservation) Act 1967 s 11(1)(a), (c) (s 11(1) substituted by the Fisheries Act 1981 s 24(1); and the Sea Fish (Conservation) Act 1967 s 11(1)(c) amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III). See also para 1015 post. As to the statutory maximum see para 849 note 15 ante. As to declarations by British sea fishery officers see para 993 post. In the case of an offence under the Sea Fish (Conservation) Act 1967 s 6(5) (as amended) or s 6(5A)(b) (as added), the court by which the offender is convicted may order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used on the vessel in catching any fish landed or trans-shipped in contravention of an order under s 6 (as amended): s 11(2)(e) (substituted by the Fisheries Act 1981 s 24(1)). As to powers of seizure see para 936 ante. A further fine equal to the value of the fish may be imposed as an alternative to forfeiture of the fish: see the Sea Fish (Conservation) Act 1967 s 11(3), (4) (s 11(3) substituted by the Fisheries Act 1981 s

24(1)). See further para 989 ante. Subject to the Sea Fish (Conservation) Act 1967 s 11(4), a fine under s 11(3) (as substituted) is in addition to any other penalty: see s 11(5); and para 989 ante. As to the exclusion of offences under the Fisheries Act 1981 s 33, Sch 4 Pt I (as amended) see para 955 ante.

## **UPDATE**

### **992-994 Prohibition on the landing of sea fish caught in specified waters ... Registration of fish sellers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **992 Prohibition on the landing of sea fish caught in specified waters**

NOTE 5--See the Tope (Prohibition of Fishing) Order 2008, SI 2008/691, and the Tope (Prohibition of Fishing) (Wales) Order 2008, SI 2008/1438.

The functions of the Secretary of State under the Sea Fish (Conservation) Act 1967 s 9(1)-(4) are transferred to the Marine Management Organisation, and s 9 is accordingly further amended: see Marine and Coastal Access Act 2009 s 8. See further WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTE 12--Sea Fish (Conservation) Act 1967 s 11(1)(a), (c) further amended, s 11(3) amended: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.

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### **993. Declarations concerning landing of sea fish.**

Any British sea fishery officer<sup>1</sup> may serve on the master<sup>2</sup> of any vessel<sup>3</sup> a notice in writing under his hand requiring the master to make a written declaration on each occasion when any sea fish<sup>4</sup> are about to be landed in England and Wales or Northern Ireland, or trans-shipped within relevant British fishery limits<sup>5</sup>, from that vessel while any order prohibiting the landing or trans-shipment of those sea fish<sup>6</sup> is in force<sup>7</sup>. The declaration must state that those sea fish are not sea fish whose landing or trans-shipment is prohibited by the order and it must be delivered to the officer or such other person, or at such place, in the port of landing or elsewhere as may be specified in the notice, before any of the sea fish are landed or trans-shipped<sup>8</sup>. At any time before any vessel in which any sea fish have been brought to land in England and Wales or Northern Ireland next puts to sea, any British sea fishery officer may request the master to make the same declaration<sup>9</sup> in respect of any of those sea fish which have been, are being or are about to be landed from the vessel while such an order<sup>10</sup> is in force, and to deliver the declaration to the officer or to such person, or to such place, in the port of landing as he may designate<sup>11</sup>. Similarly, where any sea fish have been or are being trans-shipped, or where a British sea fishery officer has reasonable grounds for believing that any sea fish are about to be trans-shipped, within relevant British fishery limits from any vessel while an order<sup>12</sup> is in force, any such officer may request the master of the vessel to make and deliver to the officer a written declaration that the sea fish in question are not sea fish the trans-shipment of which is prohibited by the order<sup>13</sup>.

If the master of any vessel makes a declaration<sup>14</sup> which is to his knowledge false in any material particular, he is guilty of an offence<sup>15</sup>. If the master of any vessel fails to make, in respect of any sea fish, a declaration in accordance with the requirements of such a notice duly served on him<sup>16</sup> or in accordance with such a request duly made<sup>17</sup> by a British sea fishery officer, as the case may be, the sea fish are presumed, until the contrary is proved, to be sea fish whose landing or trans-shipment is prohibited<sup>18</sup>.

1 'British sea fishery officer' means any person who by virtue of the Sea Fisheries Act 1968 s 7 (as amended) (see para 963 ante), is a British sea fishery officer: Sea Fish (Conservation) Act 1967 s 22(1). As to the enforcement of orders generally see para 1006 post.

2 As to the meaning of 'master' see para 980 note 17 ante.

3 As to the meaning of 'vessel' see para 969 note 4 ante.

4 For this purpose, 'sea fish' includes salmon and migratory trout: see para 992 note 4 ante. For the meaning of 'sea fish' generally, and for the meanings of 'salmon' and 'migratory trout', see para 969 note 3 ante.

5 For the meaning of 'relevant British fishery limits' see para 980 note 7 ante.

6 Ie any order made under the Sea Fish (Conservation) Act 1967 s 6(1) (as amended) (see para 992 ante) or s 6(1A) (as added and amended) (see para 992 ante).

7 Ibid s 7(1), (2A) (s 7(2A), (2B) added by the Fisheries Act 1981 s 23(5); and the Sea Fish (Conservation) Act 1967 s 7(1), (2), (2A), (2B) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2), (7)).

8 Sea Fish (Conservation) Act 1967 s 7(1) (as amended: see note 7 supra), s 7(2A) (as added and amended: see note 7 supra). A notice under s 7(1) (as amended) and s 7(2A) (as added and amended) is not to be taken to require the making or delivery of any declaration in respect of the landing or trans-shipment of any sea fish after the end of the period of six months from the date on which the notice is served: s 7(1) proviso, (2A) proviso (as so added).

9 Ie a written declaration that the sea fish in question are not sea fish whose landing is prohibited by order under ibid s 6(1) (as amended): see para 992 ante.

10 Ie an order under ibid s 6(1) (as amended): see para 992 ante.

11 Ibid s 7(2) (as amended: see note 7 supra). Nothing in s 7(2) (as amended) is to be taken to affect the operation of s 7(1) (as amended): s 7(2) proviso.

12 Ie an order under ibid s 6(1A) (as added and amended): see para 992 ante.

13 Ibid s 7(2B) (as added and amended: see note 7 supra). Nothing in s 7(2B) (as added and amended) is to be taken to affect the operation of s 7(2A) (as added and amended): s 7(2B) proviso (as so added).

14 Ie a declaration made for the purposes of ibid s 7 (as amended).

15 Ibid s 7(3). As to the penalties see para 1015 post.

16 Ie duly served under ibid s 7 (as amended). A notice made under s 7(1) (as amended) or s 7(2A) (as added and amended) relating to any vessel may be addressed to 'The Master' of the vessel (identifying it by name or otherwise) and is deemed to be duly served if it is delivered or sent by post to, or to the agent of, the owner or any charterer of the vessel, together with a written request that it be transmitted to the master and, if the notice is served by being so sent or delivered, it is deemed to be served on the master of the vessel for the time being and on every other person who at any material time thereafter is the master of the vessel: s 7(4) (amended by the Fisheries Act 1981 s 23(6)).

17 Ie duly made under the Sea Fish (Conservation) Act 1967 s 7 (as amended).

18 Ibid s 7(3)(a), (b) (amended by the Fisheries Act 1981 s 23(6)).

## UPDATE

## **992-994 Prohibition on the landing of sea fish caught in specified waters ... Registration of fish sellers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### ***F. SALE OF FISH***

#### **994. Registration of fish sellers.**

The European Council requires auction centres or other authorised bodies to submit a sales note upon the first sale of fishery products in a member state<sup>1</sup>. A registered fish<sup>2</sup> seller<sup>3</sup> is authorised for prescribed purposes<sup>4</sup>, in so far as he sells first sale fish<sup>5</sup> by any form of competitive bidding at a designated auction site either on his own behalf or as the seller's agent<sup>6</sup>.

Any person may apply, using such form as the Secretary of State<sup>7</sup> may prescribe, to be registered as a fish seller<sup>8</sup>. The Secretary of State must notify an applicant in writing of his decision on such an application and must, where he grants a registration, specify the conditions<sup>9</sup> subject to which the registration is granted<sup>10</sup>. The Secretary of State must publish a list of registered fish sellers in such manner as he sees fit<sup>11</sup>.

Any person who knowingly or recklessly makes a false statement for the purposes of an application to be registered as a fish seller is guilty of an offence<sup>12</sup>, as is any person who sells first sale fish by any form of competitive bidding at a designated auction site, either on his own behalf or as an agent of the seller, and is not a registered fish seller<sup>13</sup>.

A registered fish seller must maintain records<sup>14</sup> of each sale of first sale fish that he makes at the place notified<sup>15</sup> to the Secretary of State<sup>16</sup>. A registered fish seller must keep the records of each sale as required until the end of the second calendar year following that sale, and must make available for inspection at all reasonable times the records of sale of fish at the place notified to the Secretary of State<sup>17</sup>. A registered fish seller who does not operate his business from or is not established in the United Kingdom must: (1) either nominate a place in the United Kingdom where his records will be made available to the Secretary of State until the end of the second year following the sale to which the records relate, or submit his records annually from the date of registration<sup>18</sup>; (2) submit his records within 28 days of a demand by the authorities<sup>19</sup>; and (3) keep the records of each sale as required until the end of the second calendar year following that sale<sup>20</sup>.

Any person who sells first sale fish which has been landed in the United Kingdom otherwise than by a licensed fishing vessel<sup>21</sup> is guilty of an offence<sup>22</sup>.

1 See EEC Council Regulation 2847/93 establishing a control system applicable to the Common Fisheries Policy (OJ L261, 20.10.93, p 1) art 9. See also EC Council Regulation 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L358, 31.12.02, p 59). The detailed rules in relation to England are set out in the Registration of Fish Buyers and Sellers and Designation of

Fish Auction Sites Regulations 2005, SI 2005/1605. These regulations apply in relation only to England: see reg 1(3). However, proceedings for an offence under the regulations may be taken, and for all incidental purposes the offence may be treated as having been committed, in any place in the United Kingdom: reg 1(4). For the meaning of 'United Kingdom' see para 843 note 1 ante. For equivalent provisions in relation to Wales see the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006, SI 2006/1495. See generally the Sea Fish (Marketing Standards) Regulations 1986, SI 1986/1272.

2 'Fish' means fishery products landed from a fishing vessel to which EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9 or EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 applies: Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1).

3 Any reference to a fish seller includes an agent who sells fish on behalf of the seller and an auction trader: *ibid* reg 2(2).

4 *le* authorised for the purposes of EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9.

5 'First sale fish' means fish being marketed for the first time: Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1).

6 *Ibid* reg 3(1).

7 As to the Secretary of State see para 846 ante.

8 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 3(2). An applicant for registration as a fish seller must include with his application a statement of the facilities and the proposed methods of operation he intends to use and of the place where he intends to maintain his records of sales of first sale fish: reg 3(3). In considering an application for registration the Secretary of State must take into account whether the statement required by reg 3(3) is such as to assist compliance by the fish seller with EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 and the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 3(4).

9 The conditions are that the Secretary of State must be informed of any changes to the information contained in the application for registration within 28 days of the change occurring, and that sales notes must be submitted in accordance with EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9: Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, art 3, Sch 1. Any registered fish seller who sells first sale fish in breach of a condition of his registration is guilty of an offence: reg 3(10). For the penalties see para 997 post.

10 *Ibid* reg 3(5), (6). The registration of a fish seller may be suspended where, in the view of the Secretary of State, the registered fish seller has not complied with a condition of registration or with any requirement of EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 or the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 3(8).

11 *Ibid* reg 3(7).

12 *Ibid* reg 3(9). For the penalties see para 997 post.

13 *Ibid* reg 4.

14 Such records must include, in relation to each sale, all of the following information: (1) the date and location of the sale; (2) quantities of each species sold; (3) the price paid for each species sold; (4) the name and PLN of the vessel which landed the fish; (5) the name, address and, where available, registration number of the buyer; and (6) the reference number of the contract of sale or invoice: *ibid* reg 5(2). 'PLN' means a vessel's port number within the meaning of the Merchant Shipping (Registration of Ships) Regulations 1993, SI 1993/3138, reg 31 (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 279): Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1).

15 *le* notified in accordance with *ibid* reg 3(3): see note 8 *supra*.

16 *Ibid* reg 5(1). A registered fish seller who fails to keep or make available records as required by reg 5 is guilty of an offence: reg 5(7). For the penalties see para 997 post.

17 *Ibid* reg 5(3), (4).

18 *Ibid* reg 5(5)(a).

19 Ibid reg 5(5)(b).

20 Ibid reg 5(6).

21 'Licensed fishing vessel' means a fishing vessel in respect of which a licence has been issued under the Sea Fish (Conservation) Act 1967 s 4 (as substituted and amended) (see para 983 ante) or under similar fisheries-related provisions by another member state or by the appropriate authorities in the Channel Islands, Isle of Man or another country: Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1).

22 Ibid reg 10.

## **UPDATE**

### **992-994 Prohibition on the landing of sea fish caught in specified waters ... Registration of fish sellers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **994 Registration of fish sellers**

NOTE 1--Regulation 2371/2002 amended: EC Council Regulation 865/2007 (OJ L192, 24.7.2007, p 1). SI 2005/1605 now applies in England, in relation to any relevant British fishing boat wherever it is, except when it is in Wales, and in relation to any other fishing boat within British fishery limits, except when the boat is in (1) the Northern Ireland zone (as defined in the Northern Ireland Act 1998 s 98 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 60)); (2) the Scottish zone (as defined in the Scotland Act 1998 s 126(1) (see PARA 961)); (3) the territorial sea adjacent to the Isle of Man, Jersey or Guernsey; or (4) Wales: SI 2005/1605 reg 1(3) (reg 1(3), (4) substituted by SI 2009/1309). 'Wales' has the same meaning as in the Government of Wales Act 2006 s 158(1): SI 2005/1605 reg 1(4) (as substituted).

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### **995. Designation of fish auction sites.**

Any person may apply to the Secretary of State<sup>1</sup>, using such form as the Secretary of State may prescribe, to have a place designated<sup>2</sup> as a fish<sup>3</sup> auction site<sup>4</sup>. The Secretary of State must notify an applicant in writing of his decision on such an application<sup>5</sup> and, where he grants a designation, specify the conditions<sup>6</sup> subject to which the designation is granted<sup>7</sup>. The Secretary of State must publish a list of designated fish auction sites in such manner as he sees fit<sup>8</sup>.

Any person who knowingly or recklessly makes a false statement for the purposes of an application to have a place designated as a fish auction site is guilty of an offence<sup>9</sup>, as is any person who has control over a designated site<sup>10</sup>, or part of a site, and breaches a condition of the site's designation<sup>11</sup>.

1 As to the Secretary of State see para 846 ante.

2 le designated for the purposes of EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9 and EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22. See para 994 note 1 ante.

3 For the meaning of 'fish' see para 994 note 2 ante.

4 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 6(1). An applicant for designation must include with his application a statement as to the facilities and proposed methods of operation he will use at the site: reg 6(2). In considering an application for designation the Secretary of State must take into account whether the statement required by reg 6(2) is such as to assist compliance by the fish seller with EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 and the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 6(3).

5 Ibid reg 6(4).

6 The conditions are that auctions must be conducted only at the times notified to the Secretary of State, subject to any variation notified to and approved by a local British sea fisheries officer, and that the Secretary of State must be informed of any changes to the information contained in the application for designation within 28 days of the change occurring: *ibid* reg 6, Sch 2.

7 Ibid reg 6(5). The designation of a site may be suspended where, in the view of the Secretary of State, a condition subject to which the designation was granted has not been complied with, or the methods of operation and facilities at the site do not comply with the requirements of EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 or the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 6(7).

8 Ibid reg 6(6).

9 Ibid reg 6(8).

10 For these purposes, 'person who has control of a designated site' includes, in relation to the site or a part of the site, the owner of the site or that part, or his agent, or any person who exercises any control over or is in possession of the site or that part: *ibid* reg 6(10).

11 Ibid reg 6(9).

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## **996. Registration of fish buyers.**

For certain purposes<sup>1</sup>, any person may apply to the Secretary of State<sup>2</sup>, using such form as the Secretary of State may prescribe, to be registered as a fish<sup>3</sup> buyer<sup>4</sup>. The Secretary of State must notify an applicant in writing of his decision on such an application<sup>5</sup> and, where he grants a registration, specify the conditions<sup>6</sup> subject to which the registration is granted<sup>7</sup>. The Secretary of State must publish a list of registered buyers in such manner as he sees fit<sup>8</sup>.

Any person who knowingly or recklessly makes a false statement for the purposes of an application to be registered as a fish buyer is guilty of an offence<sup>9</sup>, as is any registered fish buyer who fails to comply with a condition of his registration<sup>10</sup>.

A registered fish buyer must maintain and make available for inspection records<sup>11</sup> of each sale of first sale fish that he makes<sup>12</sup>. A registered fish buyer must keep the records of each purchase as required, and at the place notified<sup>13</sup> to the authorities, until the end of the second calendar year following that purchase<sup>14</sup>. A registered fish buyer who does not operate his business from or is not established in the United Kingdom<sup>15</sup> must: (1) either nominate a place in

the United Kingdom where his records will be made available to the authorities until the end of the second year following purchase, or submit his records annually from the date of registration<sup>16</sup>; (2) submit his records within 28 days of a demand by the authorities<sup>17</sup>; and (3) keep the records of each purchase as required until the end of the second calendar year following that purchase<sup>18</sup>.

Any person who buys first sale fish which has been landed otherwise than by a licensed fishing vessel<sup>19</sup> is guilty of an offence<sup>20</sup>.

1       Ie for the purposes of EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22(2)(b), which requires the buyer of fisheries products from a fishing vessel at first sale to be registered with the authorities. See para 994 note 1 ante.

2       As to the Secretary of State see para 846 ante.

3       For the meaning of 'fish' see para 994 note 2 ante.

4       Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 7(1). An applicant for registration as a fish buyer must include with his application a statement of the facilities and the proposed methods of operation he intends to use and of the place where he intends to maintain his records of purchases of first sale fish: reg 7(2). For the meaning of 'first sale fish' see para 994 note 5 ante. In considering an application for registration, the Secretary of State must take into account whether the statement required by reg 7(2) is such as to assist compliance by the fish buyer with EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 and the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 7(3). See para 994 note 1 ante.

5       Ibid reg 7(4).

6       The conditions are that the Secretary of State must be informed of any changes to the information contained in the application for registration within 28 days of the change occurring, and that sales notes must be submitted in accordance with EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22(2): Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 7, Sch 3.

7       Ibid reg 7(5). The registration of a fish buyer may be suspended where, in the view of the Secretary of State, the registered fish buyer has not complied with a condition of registration or conducted his business in a manner that complies with the requirements of EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9, EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 or the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 7(7).

8       Ibid reg 7(6).

9       Ibid reg 7(8). For the penalties see para 997 post.

10       Ibid reg 7(9). A person is also guilty of an offence if he: (1) buys fisheries products from a fishing vessel at first sale without being registered with the authorities and he is not buying only for private consumption (ie he buys fish contrary to EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22(2)(b), as read with the final sub-paragraph of art 22(2)); (2) buys fish without being registered and, but for the exemption for buying for private consumption, would have been guilty of an offence and, on the day he buys the fish, buys a total of more than 25 kilograms of fish; or (3) on its first sale, buys fish other than from a registered fish seller and is not a registered buyer: Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 8(1)-(3). However, a person is not guilty of an offence under head (3) supra if he does not buy more than 25 kilograms of fish on the day in question and he can show that all of the fish that he buys is for private consumption: reg 8(4).

11       Such records must contain, in relation to each individual purchase, information comprising: (1) the date and location of the purchase; (2) quantities of each species purchased; (3) the price paid for each species purchased; (4) the name and PLN of the vessel which landed the fish; (5) the name, address and, where available, the registration number of the seller; and (6) the reference number of the invoice or contract for sale: ibid reg 9(2). For the meaning of 'PLN' see para 994 note 14 ante.

12       Ibid reg 9(1). A registered fish buyer who fails to keep, or to produce on the request of the relevant authority, the records required by reg 9 is guilty of an offence: reg 9(6). For the penalties see para 997 post.

13       Ie notified in accordance with ibid reg 7(2) (see note 4 supra).



- 14 Ibid reg 9(3).
- 15 For the meaning of 'United Kingdom' see para 843 note 1 ante.
- 16 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 9(4)(a), (b).
- 17 Ibid reg 9(4)(c).
- 18 Ibid reg 9(5).
- 19 For the meaning of 'licensed fishing vessel' see para 994 note 21 ante.
- 20 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 11(1). In any proceedings for such an offence it is a defence for a person to show that he did not know and it was reasonable for him not to suspect that the fish had not been landed by a licensed fishing vessel: reg 11(2).

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#### **997. Penalties and offences by bodies corporate etc.**

A person convicted of an offence in relation to the registration of fish buyers and sellers and designation of fish auction sites<sup>1</sup> is liable on summary conviction to a fine not exceeding the statutory maximum<sup>2</sup>, or on conviction on indictment to a fine<sup>3</sup>.

Where any offence<sup>4</sup> committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>5</sup>.

Where any such offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>6</sup>.

Where any such offence committed by an unincorporated association other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>7</sup>.

1 Is an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: see paras 994-996 ante.

2 As to the statutory maximum see para 849 note 15 ante.

3 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 12(1). In addition to those penalties, a court may also: (1) in relation to an offence under reg 3(9) (see para 994 text and note 12 ante), reg 3(10) (see para 994 note 9 ante) or reg 5(7) (see para 994 note 16 ante), order that the registration of the person convicted is to be revoked and that the person is to be disqualified from applying for registration under reg 3 (see para 994 ante), or disqualified from making such an application for a specified period; (2) in relation to an offence under reg 6(8) or (9) (see para 995 text and notes 9-11 ante), order that the designation of the site is to be revoked or order that the person convicted is to be

disqualified from applying to have a site designated under reg 6 (see para 995 ante), or disqualified from making such an application for a specified period; and (3) in relation to an offence under reg 7(8), (9) (see para 996 text and notes 9-10 ante) or reg 9(6) (see para 996 note 12 ante), order that the registration of the person convicted is to be revoked and that he is to be disqualified from applying for registration under reg 7 (see para 996 ante), or disqualified from making such an application for a specified period: reg 12(2).

4       le any offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605 (see paras 994-996 ante) or any equivalent provisions. 'Equivalent provisions' means any provision in any other regulations made under the European Communities Act 1972 s 2(2) for the purposes of implementing EEC Council Regulation 2847/93 (OJ L261, 20.10.93, p 1) art 9 or EC Council Regulation 2371/2002 (OJ L358, 31.12.02, p 59) art 22 (see para 994 note 1 ante), extending to any part of the United Kingdom, which has equivalent effect to any provision in the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605: reg 2(1). For the meaning of 'United Kingdom' see para 843 note 1 ante.

5       Ibid reg 18(1).

6       Ibid reg 18(2).

7       Ibid reg 18(3).

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## ***G. FISHING BY FOREIGN VESSELS***

### **998. Foreign fishing boats in British fishery limits.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order<sup>2</sup> designate any country outside the United Kingdom<sup>3</sup>, the Channel Islands and the Isle of Man and, in relation to it, areas within relevant British fishery limits<sup>4</sup> in which, and descriptions of sea fish<sup>5</sup> for which, fishing boats<sup>6</sup> registered in that country may fish<sup>7</sup>.

A foreign fishing boat<sup>8</sup> not registered in a designated country may not enter relevant British fishery limits except for a purpose recognised by international law or by any convention for the time being in force between the United Kingdom government and the government of the country to which the boat belongs<sup>9</sup>. Any such boat which enters those limits for such a purpose must return outside the limits as soon as the purpose has been fulfilled<sup>10</sup> and must not fish or attempt to fish while within those limits<sup>11</sup>.

When a foreign fishing boat is in an area within relevant British fishery limits and is prohibited from fishing in that area at all, or is permitted to fish only for certain descriptions of fish, its fishing gear, or so much of the gear as is not required for permitted fishing, must be stowed in accordance with an order made by the Secretary of State or the Welsh Ministers<sup>12</sup>.

In the event of contravention of any of these restrictions in the case of any fishing boat, the master is liable to a fine<sup>13</sup>. The court may on convicting him order the forfeiture of any fish or fishing gear found in the boat or taken or used by any person from the boat<sup>14</sup>.

These provisions do not prohibit or restrict fishing by fishing boats registered in a country outside the United Kingdom in any area with respect to which special provision is made by any arrangement between the United Kingdom government and the government of that country for fishing by such boats for the purpose of scientific research<sup>15</sup>.

1       As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 Orders made by the Secretary of State under the Fishery Limits Act 1976 s 2 (as amended) are subject to annulment in pursuance of a resolution of either House of Parliament: s 2(7). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to orders under the Fishery Limits Act 1976 generally see para 961 ante.

3 For the meaning of 'United Kingdom' see para 843 note 1 ante.

4 For the meaning of 'relevant British fishery limits' see para 961 note 9 ante.

5 As to the meaning of 'sea fish' see para 961 note 10 ante.

6 For the meaning of 'fishing boat' see para 961 note 11 ante.

7 Fishery Limits Act 1976 s 2(1) (s 2(1)-(4) amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 57(1), (2)). A foreign fishing boat (see note 8 infra) registered in a country designated under the Fishery Limits Act 1976 s 2(1) (as amended) may not fish or attempt to fish within relevant British fishery limits except in an area and for descriptions of fish for the time being designated under s 2 (as amended) in relation to that country: s 2(3) (as so amended).

The Fishing Boats (European Economic Community) Designation Order 1983, SI 1983/253 (amended by SI 1986/382; SI 1992/3108; SI 1996/248) designates for the purposes of the Fishery Limits Act 1976 s 2(1) (as amended) certain European Economic Community countries as countries whose registered fishing boats may fish within specified areas within British fishery limits. See also the Fishing Boats (Specified Countries) Designation Order 1996, SI 1996/1035 (amended by SI 1997/1630) which designates the Faroe Islands and Norway as countries whose registered fishing boats may fish in certain areas specified in the order within British fishery limits for specified types of sea fish.

Orders made under Fishery Limits Act 1964 s 1(3) (repealed) continue in force as if made under the Fishery Limits Act 1976 s 2(1) (as amended): see s 9(2), Sch 3 para 1. See the Fishing Boats (France) Designation Order 1965, SI 1965/1241 (amended by SI 1972/2026); the Fishing Boats (Republic of Ireland) Designation Order 1965, SI 1965/1448 (amended by SI 1972/2026); and the Fishing Boats (Belgium) Designation Order 1965, SI 1965/1569 (amended by SI 1972/2026).

8 'Foreign fishing boat' means a fishing boat which is not: (1) registered in the United Kingdom, the Channel Islands or the Isle of Man; or (2) wholly British-owned, and 'wholly British owned' means wholly owned by persons qualified to own British fishing boats for the purposes of the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq): Fishery Limits Act 1976 s 8 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 49).

9 Fishery Limits Act 1976 s 2(2) (as amended: see note 7 supra).

10 Ibid s 2(2)(a).

11 Ibid s 2(2)(b).

12 Ibid s 2(4) (as amended: see note 7 supra). See the Foreign Fishing Boats (Stowage of Gear) Order 1970, SI 1970/318.

13 Fishery Limits Act 1976 s 2(5)(a). On summary conviction the fine must not exceed £50,000 and on conviction on indictment the fine is unlimited: see s 2(5)(a).

14 Ibid s 2(5)(b).

15 Ibid s 2(6). Section 2 (as amended) does not restrict the carrying on of operations which are conducted for the purposes of scientific investigation, or for the purpose of transplanting sea fish from one fishing ground to another, or the landing of sea fish caught in the course of any such operations: see the Sea Fish Industry Act 1962 s 17 (amended by the Sea Fish (Conservation) Act 1967 s 25(1), Schedule; and the Fishery Limits Act 1976 s 2(8)).

## UPDATE

### 998 Foreign fishing boats in British fishery limits

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/G. FISHING BY FOREIGN VESSELS/999. Customs regulations.

### **999. Customs regulations.**

A sea fishing boat is a ship for the purposes of the Customs and Excise Management Act 1979<sup>1</sup>, and therefore a boat arriving at a port in the United Kingdom from a foreign port must comply with the provisions of that Act relating specifically to ships, such as report of ship and payment of duty<sup>2</sup>, as well as to those provisions relating generally to the import of goods<sup>3</sup>.

1 For this purpose, 'ship' includes any boat whatsoever: see the Customs and Excise Management Act 1979 s 1(1); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 897.

2 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) paras 970 et seq, 1063 et seq.

3 See generally CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 950 et seq.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/G. FISHING BY FOREIGN VESSELS/1000. Foreign fishing boats on the high seas.

### **1000. Foreign fishing boats on the high seas.**

Foreign sea fishing boats on the high seas outside relevant British fishery limits<sup>1</sup> are not in general subject to the provisions of English municipal law relating to fishing boats<sup>2</sup>. In some cases conventions<sup>3</sup> regulate the conduct of fishing boats anywhere within convention areas which may be wholly or partly outside British fishery limits, but breach of such conventions is not an offence justiciable in an English court unless committed within British fishery limits<sup>4</sup>. However, for the purpose of enforcing the provisions of any convention to which the United Kingdom<sup>5</sup> government is a party, a British sea fishery officer<sup>6</sup> may stop and board foreign fishing boats and make examinations and inquiries on board, anywhere within the convention area<sup>7</sup>.

1 As to British fishery limits see para 961 ante.

2 See eg the Sea Fish (Conservation) Act 1967 s 5(8) (as substituted and amended), which limits the application of orders under s 5 (as amended), so far as they relate to fishing boats other than British boats, to the waters within relevant British fishery limits; and see para 989 ante.

3 As to the conventions generally see para 960 ante. As to the agreement with Norway see para 1001 post.

4 See eg the Sea Fisheries Act 1968 s 5(1), (2), (4) (as amended); and para 990 ante.

5 For the meaning of 'United Kingdom' see para 843 note 1 ante.

6 As to British sea fishery officers see para 963 ante.

7 See the Sea Fisheries Act 1968 s 8(2), (3) (as amended), s 9(1) (as amended); and paras 1002-1003 post.

## UPDATE

### 1000 Foreign fishing boats on the high seas

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(iv) Regulation of Sea Fishing/G. FISHING BY FOREIGN VESSELS/1001. Norwegian fishing boats.

#### 1001. Norwegian fishing boats.

An agreement with the government of Norway<sup>1</sup> affects fishing vessels registered in the United Kingdom<sup>2</sup> and Norway in waters situated off the coast of Norway north of 61 degrees north latitude and as far west as the meridian of the North Unst Lighthouse<sup>3</sup>. This agreement provides for the contracting parties to apply its terms to vessels registered in their respective territories<sup>4</sup> and contains rules as to nationality, registration and identification of fishing vessels<sup>5</sup>, rules governing the operations of fishing<sup>6</sup> and rules relating to the policing of the fisheries<sup>7</sup>. The last-mentioned rules provide for the superintendence of the fisheries in the convention area to be exercised by fishery protection vessels of each contracting party<sup>8</sup>. Commanders of fishery protection vessels may visit vessels<sup>9</sup>, draw up reports<sup>10</sup>, call for official documents<sup>11</sup> and report cases to a fishery protection vessel of the same country as the offending vessel<sup>12</sup>.

1 See the Fishery Agreement (Oslo, 17 November 1960; TS 25 (1961); Cmnd 1352), scheduled to the Anglo-Norwegian Sea Fisheries Order 1961, SI 1961/342.

2 For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 Anglo-Norwegian Sea Fisheries Order 1961, SI 1961/342, art 1(5).

4 See *ibid* Schedule art VII.

5 See *ibid* Schedule, Annex 1 arts 1-8.

6 See *ibid* Schedule, Annex 1 arts 9-19.

7 See *ibid* Schedule, Annex 1 arts 20-27.

8 See *ibid* Schedule, Annex 1 art 20(1). Within the zone between six and twelve miles from the baselines, superintendence is exercised by the Norwegian fishery protection vessels: Schedule, Annex 1 art 20(2). As to general powers of sea fishery officers to enforce conventions see paras 1002-1003 post.

9 See *ibid* Schedule, Annex 1 art 21.

10 See *ibid* Schedule, Annex 1 art 21.

11 See *ibid* Schedule, Annex 1 art 22.

12 See *ibid* Schedule, Annex 1 art 23.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/(v) Enforcement and Offences/A. POWERS OF SEA FISHERY OFFICERS/1002. Enforcement by British sea fishery officers.

## **(v) Enforcement and Offences**

### **A. *POWERS OF SEA FISHERY OFFICERS***

#### **1002. Enforcement by British sea fishery officers.**

For the purpose of enforcing the provisions of certain enactments and orders<sup>1</sup> a British sea fishery officer<sup>2</sup> may exercise, in relation to any fishing boat<sup>3</sup> within British fishery limits<sup>4</sup>, and in relation to any British fishing boat<sup>5</sup> anywhere outside those limits, the following powers<sup>6</sup>:

(1) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat<sup>7</sup>.

(2) He may require the attendance of the master<sup>8</sup> and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose of enforcing the above provisions<sup>9</sup>. In particular he may: (a) examine any fish on the boat and its equipment, including the fishing gear, and require persons on board to do anything which appears to him to be necessary for facilitating the examination<sup>10</sup>; and (b) require any person on board the boat to produce any documents relating to the boat, to its fishing operations or other ancillary operations or to the persons on board which are in his custody or possession and may take copies of any such document<sup>11</sup>; (c) for the purpose of ascertaining whether the master, owner or charterer of the boat has committed an offence<sup>12</sup>, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search<sup>13</sup>; and (d) where the boat is one in relation to which he has reason to suspect that such an offence has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling such document to be used as evidence in proceedings for the offence<sup>14</sup>.

(3) Where it appears to a British sea fishery officer that a contravention of any provision of one of the orders or enactments<sup>15</sup> has at any time taken place within British fishery limits, or has been committed in relation to any fishing boat, he may take or require the master of the boat in relation to which the contravention took place to take the boat and its crew to the port which appears to him to be the nearest convenient port and detain or require the master to detain the boat there until notification<sup>16</sup>.

If it appears to a British sea fishery officer that a British fishing boat, or a fishing boat belonging to a country which is party to a convention<sup>17</sup> to which the United Kingdom<sup>18</sup> government is a party, is being so navigated or stationed as to interfere or be likely to interfere with fishing operations which are being carried on, or about to be carried on, within British fishery limits, he may require the boat to move away or to move in a direction or to a position specified by him<sup>19</sup>.

1       le for the purpose of enforcing the provisions of any order under the Sea Fisheries Act 1968 s 5 (as amended) (see para 990 ante) or the Fishery Limits Act 1976 s 2 (as amended) (see para 998 ante): Sea Fisheries Act 1968 s 8(1) (amended by the Fishery Limits Act 1976 ss 2(8), 9(1), Sch 2 para 17(1)). As to other powers of enforcement see paras 1003-1006 post. The Sea Fisheries Act 1968 s 8 (as amended) also applies to the Merchant Shipping Act 1995 s 15 (as amended) and any regulations made under it: see s 15(9).

2       As to British sea fishery officers see para 963 ante.

3       For the meaning of 'fishing boat' see paras 990 note 3, 982 note 1 ante.

4       As to British fishery limits see para 961 ante.

5       For the meaning of 'British fishing boat' see paras 990 note 5, 982 note 1 ante.

6       Sea Fisheries Act 1968 s 8(1) (as amended: see note 1 supra). The powers referred to in the text are those set out in s 8(2)-(4) (as amended): see the text and notes 7-16 infra. Further general powers are set out in s 8(5), (6) (as amended): see the text and note 19 infra; and para 1004 post. A British sea fishery officer may exercise the powers set out in s 8(2)-(4) (as amended) for the enforcement of the Sea Fish (Conservation) Act 1967 ss 1-7, and orders under ss 1-7 (as amended): see s 15(3) (as substituted and amended); and para 1006 post. Similar powers are conferred on British sea fishery officers, in relation to any British fishing boat within a restricted fishing area, for the purpose of enforcing the provisions of the British Fishing Boats Act 1983 s 1 (as amended) (see para 982 ante): see s 2(1).

Any person who: (1) without reasonable excuse fails to comply with any requirement imposed by a British sea fishery officer under s 2; (2) prevents, or attempts to prevent, any other person from complying with any such requirement; or (3) assaults any such officer while exercising any of the powers conferred on him under s 2 or wilfully obstructs any such officer in the exercise of any of those powers, is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: s 4(1).

7       Sea Fisheries Act 1968 s 8(2); British Fishing Boats Act 1983 s 2(2).

8       As to the meaning of 'master' see paras 990 note 9, 982 note 11 ante.

9       Sea Fisheries Act 1968 s 8(3); British Fishing Boats Act 1983 s 2(3). As to the provisions concerned see note 1 supra.

10       Sea Fisheries Act 1968 s 8(3)(a).

11       Ibid s 8(3)(b) (substituted by the Fisheries Act 1981 s 26(2)); British Fishing Boats Act 1983 s 2(4)(a). For the purpose of enforcing powers under s 1 (as amended) (see para 982 ante) a British sea fishery officer may also require any person on board to produce any document that may be relevant for determining his nationality: see s 2(4)(a).

12       le an offence under any of the provisions mentioned in note 1 supra.

13       Sea Fisheries Act 1968 s 8(3)(c) (added by the Fisheries Act 1981 s 26(2)); British Fishing Boats Act 1983 s 2(4)(b).

14       Sea Fisheries Act 1968 s 8(3)(d) (added by the Fisheries Act 1981 s 26(2)); British Fishing Boats Act 1983 s 2(4)(c). This provision does not permit any document required by law to be carried on board to be seized and detained except while the boat is detained in a port: Sea Fisheries Act 1968 s 8(3) (amended by the Fisheries Act 1981 s 26(2)); British Fishing Boats Act 1983 s 2(4).

15       le the enactments and orders mentioned in note 1 supra.

16       Sea Fisheries Act 1968 s 8(4) (substituted by the Fisheries Act 1981 s 26(3)); British Fishing Boats Act 1983 s 2(5). Where a boat is detained the officer must serve on the master a notice in writing stating that the boat will be or is required to be detained until that notice is withdrawn by service on the master of a further notice in writing signed by a British sea fishery officer: Sea Fisheries Act 1968 s 8(4) (as so substituted); British Fishing Boats Act 1983 s 2(5).

17       'Convention' includes an agreement or other arrangement: Sea Fisheries Act 1968 s 19(1). As to the conventions see para 960 ante. As to powers to enforce conventions see para 1003 post.

18       For the meaning of 'United Kingdom' see para 843 note 1 ante.

19       Sea Fisheries Act 1968 s 8(5) (amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 17(1)).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1002-1004 Enforcement by British sea fishery officers ... Enforcement of provisions as to registry, lettering, numbering and collisions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1003. Enforcement of conventions.**

For the purpose of enforcing the provisions of any convention<sup>1</sup> with respect to the conduct or safeguarding of fishing operations to which the United Kingdom<sup>2</sup> government is a party, a foreign sea fishery officer<sup>3</sup> may, in relation to a British fishing boat<sup>4</sup>, and a British sea fishery officer<sup>5</sup> may, in relation to any foreign fishing boat<sup>5</sup>, exercise anywhere within the convention area<sup>7</sup> outside British fishery limits<sup>8</sup> powers of boarding and examination<sup>9</sup>.

1 As to the meaning of 'convention' see para 1002 note 17 ante. As to the conventions see para 960 ante.

2 For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 In relation to any convention with respect to the conduct or safeguarding of fishing or ancillary operations to which the United Kingdom government is a party, 'foreign sea fishery officer' means a person of any class specified in an order made by the Secretary of State or the Welsh Ministers (see para 846 ante), being a person appointed by the government of any other country which is a party to the convention to enforce its provisions or any other person having power under the laws of that other country to enforce those provisions: Sea Fisheries Act 1968 ss 7(4), 19(1). As to the making, variation and revocation of orders under the Sea Fisheries Act 1968 see para 990 ante.

The Foreign Sea-Fishery Officers Order 1976, SI 1976/1103, specifies as foreign sea fishery officers persons duly appointed by the government of Iceland as inspectors to enforce the Exchange of Notes between the United Kingdom and Iceland Concerning Fishing in the Icelandic Fisheries Zone (Oslo, 1 June 1976; TS 73 (1976); Cmnd 6545): see para 960 ante. See also the Foreign Sea-Fishery Officers Order 1973, SI 1973/1998.

4 For the meaning of 'British fishing boat' see para 990 note 5 ante.

5 As to British sea fishery officers see para 963 ante.



6 For the meaning of 'foreign fishing boat' see para 990 note 7 ante.

7 'Convention area' means, in relation to any international convention, the area to which the convention relates: Sea Fisheries Act 1968 s 19(1).

8 As to British fishery limits see para 961 ante.

9 Sea Fisheries Act 1968 s 9(1) (amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 17(1)). The relevant powers are those conferred by the Sea Fisheries Act 1968 s 8(2), (3) (as amended): see para 1002 ante. Nothing in s 9 (as amended) authorises a British or foreign sea fishery officer to do anything not authorised by the convention he is purporting to enforce, or authorises him to exercise in relation to a boat belonging to a country which is a party to the convention any power which the government of that country has informed the other parties to the convention is not to be exercised in relation to its fishing boats: s 9(2).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1002-1004 Enforcement by British sea fishery officers ... Enforcement of provisions as to registry, lettering, numbering and collisions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1004. Enforcement of provisions as to registry, lettering, numbering and collisions.**

A British sea fishery officer<sup>1</sup> may exercise his statutory powers<sup>2</sup> for the enforcement of the provisions relating to the registration of British fishing boats<sup>3</sup>.

For the purpose of enforcing the statutory collision regulations<sup>4</sup>, so far as they apply to fishing boats<sup>5</sup>, a British sea fishery officer<sup>6</sup> may exercise, in relation to any fishing boats within British fishery limits<sup>7</sup> and in relation to a British fishing boat<sup>8</sup> anywhere outside those limits, the general powers of enforcement<sup>9</sup> and the power to require production of ships documents<sup>10</sup>.

1 As to British sea fishery officers see para 963 ante.

2 le his powers under the Sea Fisheries Act 1968 ss 8, 9 (both as amended): see paras 1002-1003 ante.

3 See the Merchant Shipping Act 1995 s 15(9); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1117. As to the registration of ships see Pt II (ss 8-23) (as amended); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq.

4 le the collision regulations made under ibid s 85 (as amended): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 715 et seq.

5 For the meaning of 'fishing boat' see para 990 note 3 ante.

6 As to British sea fishery officers see para 963 ante.

7 As to British fishery limits see para 961 ante.

8 For the meaning of 'British fishing boat' see para 990 note 5 ante.

9 le a British sea fishery officer's powers of enforcement conferred by the Sea Fisheries Act 1968 s 8 (as amended): see para 1002 ante.

10 Ibid s 8(6) (amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 17(1); and the Merchant Shipping Act 1995 s 314(2), Sch 13 para 43(a)). The power mentioned in the text is that conferred by the Merchant Shipping Act 1995 s 257: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 47.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1002-1004 Enforcement by British sea fishery officers ... Enforcement of provisions as to registry, lettering, numbering and collisions**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1005. Control of liquor traffic among North Sea fishermen.**

For the purpose of enforcing the statutory provisions concerning the liquor traffic among fishermen in the North Sea<sup>1</sup>, in the case of British and foreign vessels, whether within or beyond

the North Sea limits, all British and foreign sea fishery officers have the same powers and protection as they have for enforcing the provisions of the Sea Fisheries Act 1883 in the case of British and foreign sea fishing boats respectively<sup>2</sup>. In the case of a vessel other than a sea fishing boat, and not habitually employed in dealing with fishermen, the officer must not take the vessel into port unless he is satisfied that such a course is necessary for the suppression of grave disorder<sup>3</sup>.

1       le the provisions of the North Sea Fisheries Act 1893: see para 1014 post.

2       Ibid s 6. The Sea Fisheries Act 1883 has been repealed. The provisions of the North Sea Fisheries Act 1893 relating to the sea fishery officers of any foreign state bound by the Convention for Regulating the Police of the North Sea Fisheries (The Hague, 6 May 1882; 73 BFSP 39) (see para 960 ante) continue in operation notwithstanding the termination of the operation of that convention as respects that foreign state: North Sea Fisheries Act 1893 s 10(2). As to British sea fishery officers see para 963 ante. As to foreign sea fishery officers see para 1003 note 3 ante.

3       Ibid s 6 proviso.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1005 Control of liquor traffic among North Sea fishermen**

NOTES--North Sea Fisheries Act 1893 repealed: Marine and Coastal Access Act 2009 s 234(d), Sch 22 Pt 5.

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### **1006. Enforcement of orders.**

Every British sea fishery officer<sup>1</sup> may exercise in relation to any fishing boat<sup>2</sup> in any waters adjacent to the United Kingdom<sup>3</sup> and within relevant British fishery limits<sup>4</sup>, and in relation to any relevant British fishing boat<sup>5</sup> registered in the United Kingdom and any British-owned<sup>6</sup> fishing boat (not so registered) anywhere outside those limits, such powers<sup>7</sup> as may be conferred on him by order<sup>8</sup> of the Secretary of State or the Welsh Ministers<sup>9</sup>, being powers which the Secretary of State considers or the Welsh Ministers consider necessary for the enforcement of certain provisions<sup>10</sup> relating to the regulation of fishing<sup>11</sup>. He may: (1) seize fish, nets or other fishing gear<sup>12</sup>; (2) enter at any reasonable time certain premises<sup>13</sup> used for carrying on any business in connection with the operation of fishing boats or sea fish<sup>14</sup> and require documents

to be produced<sup>15</sup>; and (3) go on board any vessel into which sea fish are being trans-shipped to inspect the fish or vessel or require documents to be produced<sup>16</sup>. In relation to the powers of entry and search set out in heads (2) and (3) above, a person who without reasonable excuse fails to comply with any reasonable requirement of the officer or who assaults an officer who is exercising any of the powers conferred on him or wilfully obstructs him in the exercise of those powers is guilty of an offence<sup>17</sup>.

1 As to British sea fishery officers see para 963 ante. As to further powers of British sea fishery officers in relation to orders under the Sea Fish (Conservation) Act 1967 s 6 (as amended) see paras 992-993 ante.

2 For the meaning of 'fishing boat' see para 969 note 4 ante.

3 For the meaning of 'United Kingdom' see para 843 note 1 ante.

4 For the meaning of 'relevant British fishery limits' see para 980 note 7 ante. As to British fishery limits see para 961 ante.

5 For the meaning of 'relevant British fishing boat' see para 969 note 4 ante.

6 For the meaning of 'British-owned' see para 989 note 10 ante.

7 I.e. such of the powers of a British sea fishery officer under the Sea Fisheries Act 1968 s 8(2)-(4) (as amended) as may be conferred by the order: see para 1002 ante. As to the protection of British sea fishery officers see para 1010 post.

8 Such an order is made under the Sea Fish (Conservation) Act 1967 s 15 (as amended). As to the making of orders generally see s 20 (as amended); and para 959 ante. An order under s 15 (as amended) may make different provisions for different cases: see s 15(4) (s 15(3)-(5) substituted by the Sea Fisheries Act 1968 s 22(1), Sch 1 para 38). The Sea Fisheries Act 1968 s 10 (as amended) (see para 1010 post) applies in relation to the provisions of such an order and the powers thereby conferred in the same way as it applies in relation to s 8 (as amended) (see para 1002 ante) and the powers thereby conferred; and in relation to an offence under s 10 (as amended) as so applied, ss 12-14 (as amended) (see paras 1017, 1019 post) apply accordingly: Sea Fish (Conservation) Act 1967 s 15(5) (as so substituted). See note 11 infra. See the Salmon and Migratory Trout (Enforcement) Order 1973, SI 1973/210.

9 As to the Secretary of State and the Welsh Ministers see para 846 ante.

10 I.e. for the enforcement of any of the provisions of the Sea Fish (Conservation) Act 1967 ss 1-7 (as amended), or any order made under any of those provisions: s 15(3) (as substituted (see note 8 supra); and amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 16(1); and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43). See also note 11 infra.

11 Sea Fish (Conservation) Act 1967 s 15(1) (amended by the Sea Fisheries Act 1968 s 22(1), (2), Sch 1 Pt II, Sch 2 Pt II); Sea Fish (Conservation) Act 1967 s 15(3) (as substituted (see note 8 supra); amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 16 and by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43(1), (2)(b)).

Under the Sea Fish (Conservation) Act 1967 s 15(3A) (s 15(3A), (3B) added by the Sea Fish (Conservation) Act 1992 s 6)), the powers which may be conferred on any such officer by an order under the Sea Fish (Conservation) Act 1967 s 15 (as amended) include power to:

- (1) require any person on board the boat to produce: (a) any automatic recording equipment or transmitting equipment used in accordance with a condition included in a licence by virtue of s 4(6) (as substituted and amended) (see para 984 ante) or s 4A(6) (as added) (see para 987 ante); or (b) any record produced by means of such equipment, or partly by those and partly by other means;
- (2) search the boat for any such equipment or record, and require any person on board the boat to do anything which appears to the officer to be necessary to facilitate the search;
- (3) examine and take copies of any such record;
- (4) seize and detain any such equipment or record for the purpose of enabling that equipment or record, or any record which may be produced by means of that equipment, to be used as evidence in proceedings for any offence.

An order under s 15 (as amended) does not permit anything which is required to be carried on board the boat by a condition included in a licence by virtue of s 4(6) (as substituted and amended) (see para 984 ante) or s 4A(6) (as added) (see para 987 ante) to be seized and detained except while the boat is detained in a port: s 15(3B) (as so added).

12 See *ibid* s 15(2) (amended by the Fisheries Act 1981 s 25(1); and the Fishery Limits Act 1976 s 9(1), Sch 2 para 16(3)), which states that any such officer may seize:

- (1) any fish in respect of which an offence has been or is being committed under the Sea Fish (Conservation) Act 1967 s 1(3) (as substituted and amended) (see para 988 ante);
- (2) any net or other fishing gear in respect of which a contravention of an order under s 3 (as amended) (see para 980 ante) has been or is being committed;
- (3) any fish in respect of which an offence has been or is being committed under s 4(3) (as substituted) (see para 983 ante), s 4(6) (as substituted and amended) (see para 984 ante), s 4(9A) (as added) (see para 983 ante) or s 5(1), (6) (as substituted and amended) (see para 989 ante) where the fish are on the fishing boat with or on which the offence has been or is being committed or are in the ownership or custody of, or under the control of, the owner, the master or the charterer (if any) of the fishing boat;
- (4) any net or other fishing gear used in contravention of a prohibition imposed by an order under s 4 (as substituted and amended) (see para 983 ante) or s 5 (as amended) (see para 989 ante);
- (5) any fish landed in contravention of an order under s 6 (as amended) (see para 992 ante), and any net or other fishing gear used in catching any fish so landed.

As to the meaning of 'master' see para 980 note 17 ante.

13 'Premises' excludes dwelling houses: see note 15 head (1) *infra*.

14 For the meaning of 'sea fish' see para 969 note 3 ante.

15 See the Sea Fish (Conservation) Act 1967 s 15(2A) (s 15(2A)-(2C) added by the Fisheries Act 1981 s 25(2)), which provides that any officer may:

- (1) enter at any reasonable time any premises (other than a dwelling house) used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage or sale of sea fish;
- (2) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, trans-shipment, sale or disposal of any sea fish;
- (3) take copies of any such document,

and, if he has reason to suspect that an offence under the Sea Fish (Conservation) Act 1967 has been committed, he may also:

- (a) search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search;
- (b) seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence.

16 See *ibid* s 15(2B) (as added: see note 15 *supra*), which provides that any such officer may:

- (1) go on board any vessel into which sea fish are being trans-shipped or into which he has reason to believe that sea fish have been or are about to be trans-shipped;
- (2) require any person on the vessel to produce any documents which are in his custody or possession relating to sea fish which have been or are to be trans-shipped into that vessel;
- (3) for the purpose of ascertaining whether an offence has been committed under the Sea Fish (Conservation) Act 1967, search the vessel for any such document;

- (4) take copies of any such document;
- (5) inspect any sea fish on, and the equipment of, the vessel, and observe any trans-shipment of sea fish into, the vessel;
- (6) require any person on the vessel to do anything which appears to the officer to be necessary for facilitating the exercise of his powers under head (1), (3) or (5) supra.

17 Ibid s 15(2C) (as added: see note 15 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on indictment to a fine: s 15(2C) (as so added).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1006 Enforcement of orders**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 17--Sea Fish (Conservation) Act 1967 s 15(2C) amended, s 15(2D), (2E) added: Marine and Coastal Access Act 2009 s 199(3), Sch 22 Pt 5.

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### **1007. Powers of entry in relation to premises on land.**

If in England and Wales a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the British Fishing Boats Act 1983<sup>1</sup> has been committed in relation to any fishing boat<sup>2</sup> and that any document relevant<sup>3</sup> for determining whether such an offence has been committed in relation to that boat may be found on any premises<sup>4</sup> specified in the information, he may grant a search warrant<sup>5</sup>. A warrant authorises any British sea fishery officer<sup>6</sup> named in the warrant, with or without any constables, to enter and search the premises specified in the warrant for any document relevant to determining whether the suspected offence has been committed<sup>7</sup>. Such an officer may require any person on any premises he has entered in pursuance of any such warrant to produce any document in his custody or possession relevant for determining whether an offence has been committed and may take copies of such document<sup>8</sup>. Any such officer may require any such

person to do anything that appears necessary for facilitating any search<sup>9</sup> and may seize and detain any document produced to him or found in the course of such search for the purpose of enabling such document to be used as evidence in proceedings for the offence<sup>10</sup>.

Any person who: (1) without reasonable excuse fails to comply with any such requirement imposed by a British sea fishery officer; (2) prevents, or attempts to prevent, any other person from complying with any such requirement; or (3) assaults any such officer while exercising any of the powers conferred on him or wilfully obstructs any such officer in the exercise of any of those powers is guilty of an offence<sup>11</sup>.

1       Ie an offence under the British Fishing Boats Act 1983 s 1 (as amended): see para 982 ante.

2       For the meaning of 'fishing boat' see para 982 note 1 ante.

3       For this purpose, a document is regarded as relevant for determining whether an offence under the British Fishing Boats Act 1983 s 1 (as amended) (see para 982 ante) has been committed in relation to a fishing boat if it relates: (1) to that boat, to its fishing operations or operations ancillary to such operations; or (2) to the nationality of members of the crew of that boat: s 3(3).

4       The premises specified in any information laid for the purposes of *ibid* s 3(1) must be premises (other than a dwelling house) used for carrying on a business in connection with the operation of fishing boats or activities connected with or ancillary to the operation of fishing boats: s 3(2).

5       *Ibid* s 3(1). A warrant granted remains in force for one month: s 3(8).

6       As to British sea fishery officers see para 963 ante.

7       British Fishing Boats Act 1983 s 3(4).

8       *Ibid* s 3(5).

9       *Ibid* s 3(6).

10       *Ibid* s 3(7).

11       *Ibid* s 4(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: s 4(1).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

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### **1008. Enforcement of orders relating to trans-shipment of fish.**

For the purpose of enforcing the provisions of an order relating to trans-shipment<sup>1</sup> or the conditions of any licence granted under those provisions<sup>2</sup>, a British sea fishery officer<sup>3</sup> may exercise in relation to any vessel, whether British or foreign, within British fishery limits<sup>4</sup> certain powers<sup>5</sup>. Such an officer may go on board the vessel, with or without persons assigned to assist him in his duties<sup>6</sup>. He may require the attendance of the master and other persons on board the vessel and may make any examination and inquiry which appears to him to be necessary for the purpose of enforcing the provisions or conditions of such an order<sup>7</sup>. Where it appears to him that a contravention of the order or a breach of a condition of the licence has at any time taken place he may require the master of the vessel in relation to which the contravention took place to take, or may himself take, the vessel and its crew to the port which appears to him to be the nearest convenient port and detain or require the master to detain the vessel in the port<sup>8</sup>.

1       Ie an order under the Sea Fish (Conservation) Act 1967 s 4A (as added) (see para 986 ante) or s 6(1A) (as added and amended) (see para 992 ante).

2       Ie under *ibid* s 4A (as added and amended); see para 987 ante.

3       As to British sea fishery officers see para 1002 et seq ante.

4       As to British fishery limits see para 961 ante.

5       Fisheries Act 1981 s 27(1).

6       *Ibid* s 27(2). For that purpose the officer may require the vessel to stop and do anything else which will facilitate the boarding of the vessel: s 27(2).

7       *Ibid* s 27(3).

8       *Ibid* s 27(4). If the vessel is detained the officer must serve on the master a notice in writing stating that the vessel will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea fishery officer: s 27(4).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1008-1013 Enforcement of orders relating to trans-shipment of fish ... Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).



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### **1009. Enforcement of provisions regulating sale of fish.**

For the purpose of enforcing the regulations governing the registration of fish buyers and sellers and designation of fish auction sites<sup>1</sup>, any British sea fishery officer<sup>2</sup> may exercise the specified powers of enforcement in relation to fishing boats<sup>3</sup> and on land<sup>4</sup>. Any British sea fishery officer may also seize any fish, including any receptacle which contains the fish, in respect of which he has reasonable grounds to suspect that an offence<sup>5</sup> has been committed<sup>6</sup>.

Any person who: (1) fails without reasonable excuse to comply with any requirement imposed by a British sea fishery officer under his enforcement powers<sup>7</sup>; (2) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or (3) assaults an officer who is exercising any enforcement powers or intentionally obstructs any such officer in the exercise of any of those powers is guilty of an offence<sup>8</sup>.

An officer or a person assisting him<sup>9</sup> is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care<sup>10</sup>.

<sup>1</sup>     le enforcement of the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605 (see paras 994-997 ante) or any equivalent provisions. For the meaning of 'equivalent provisions' see para 997 note 4 ante.

<sup>2</sup>     As to British sea fishery officers see para 963 ante.

<sup>3</sup>     See the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 13. Any British sea fishery officer may exercise the powers conferred by reg 13 in relation to any relevant British fishing boat wherever it may be or any other fishing boat which is within relevant British fishery limits: reg 13(1). For this purpose, 'relevant British fishing boat' means a British fishing boat which is neither a Scottish fishing boat nor a Northern Ireland fishing boat: reg 2(1). 'British fishing boat' means a fishing boat which is registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq) or is owned wholly by persons qualified to own British ships for the purposes of Pt II (as amended): Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1). 'Scottish fishing boat' means a British fishing boat which is registered in the register maintained under the Merchant Shipping Act 1995 s 8 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254) and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging; and 'Northern Ireland fishing boat' means a fishing boat which is so registered and whose entry specifies a port in Northern Ireland: see the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, reg 2(1). As to British fishery limits see para 961 ante.

Any British sea fishery officer may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat: reg 13(2). He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in reg 13(1) and, in particular: (1) may search for fish or fishing gear on the boat and may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require persons on board the boat to do anything which appears to him to be necessary for facilitating the examination; (2) may require any person on board the boat to produce any document relating to the boat, to any fishing operations or other ancillary operations or to the persons on board which is in his custody or possession; (3) for the purpose of ascertaining whether an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions has been committed, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search; (4) may inspect and take copies of any such document produced

to him or found on board; (5) without prejudice to heads (3) and (4) supra, may require the master and any person for the time being in charge of the boat to render all such documents on a computer system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and (6) where the boat is one in relation to which he has reason to suspect that an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions has been committed, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence; but nothing in head (6) supra permits any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port: reg 13(3). 'Document' includes information recorded in any form: reg 2(1). For the meaning of 'fish' see para 994 note 2 ante.

Where it appears to a British sea fishery officer that an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions has at any time been committed, he may:

- (a) require the master of the boat in relation to which the offence took place to take, or himself take, the boat and its crew to the port which appears to him to be the nearest convenient port; and
- (b) detain or require the master to detain the boat in the port,

and where such an officer detains or requires the detention of a boat he must serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea fishery officer: reg 13(4).

4 See *ibid* reg 14. For the purpose of enforcing the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions, any British sea fishery officer may: (1) enter and inspect at any reasonable time any premises used for carrying on any business in connection with the operation of fishing boats or activities connected therewith or ancillary thereto or with the treatment, storage, purchase or sale of fish; (2) take with him such other persons as appear to him to be necessary and any equipment or materials; (3) examine any fish on the premises and require persons on the premises to do anything which appears to him to be necessary for facilitating the examination; (4) carry out at such premises such other inspections or tests as may reasonably be necessary; (5) require any person not to remove or cause to be removed any fish from such premises for such a period as may be reasonably necessary for the purposes of establishing whether an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions has at any time been committed; (6) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, transportation, trans-shipment, sale or disposal of any fish or to the entry to, or exit from, any port or harbour by any fishing vessel; (7) for the purpose of ascertaining whether any person on the premises has committed an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions, search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search; (8) inspect and take copies of any such document produced to him or found on the premises; (9) require any appropriate or responsible person to render any such document on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away; and (10) if he has a reason to suspect that an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions has been committed, seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings for the offence: reg 14(1). The provisions of heads (1)-(10) supra also apply in relation to any land used in connection with any of the activities described in those heads, or in respect of any vehicle or container which a British sea fishery officer has reasonable cause to believe is being used to transport fisheries products, as they apply in relation to premises and, in the case of a vehicle, include power to require the vehicle to stop at any time and, if necessary, direct the vehicle to some other place to facilitate the inspection: reg 14(2).

If a justice of the peace on sworn information in writing is satisfied: (a) that there is reasonable ground to believe that any documents or other items which a British sea fishery officer has power under reg 14 to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or any equivalent provisions; and (b) either: (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier; or (ii) that an application for admission or the giving of such notice would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return; the justice may by warrant signed by him, and valid for one month, authorise a British sea fishery officer to enter the premises, if need be by reasonable force, and take with him such persons as appear to him to be necessary: reg 14(3).

5 If an offence under the Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605, or under any equivalent provisions.

6 Ibid reg 15(2). Regulation 15 applies: (1) in England; (2) to any British fishing boat wherever it may be; and (3) to any other fishing boat which is within relevant British fishery limits: reg 15(1).

7 Ie the powers conferred by ibid regs 13-15: see the text and notes 1-6 supra.

8 Ibid reg 17(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 17(2). As to the statutory maximum see para 849 note 15 ante.

9 Ie by virtue of ibid reg 13(2) (see note 3 supra) or reg 14(1)(b) (see note 4 head (2) supra) or by virtue of authorisation under reg 14(3) (see note 4 supra).

10 Ibid reg 16.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1008-1013 Enforcement of orders relating to trans-shipment of fish ... Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1009 Enforcement of provisions regulating sale of fish**

NOTE 3--For the purpose of enforcing SI 2005/1605 or any equivalent provisions, any British sea-fishery officer may exercise the powers conferred by reg 13 in relation to any fishing boat to which SI 2005/1605 applies: SI 2005/1605 reg 13(1) (substituted by SI 2009/1309). SI 2005/1605 reg 13(3) amended: SI 2009/1309.

TEXT AND NOTES 5, 6--Any British sea-fishery officer may seize any fish, including any receptacle that contains the fish, in respect of which the officer has reasonable grounds to suspect than an offence under SI 2005/1605 or under any equivalent provision has been committed: SI 2005/1605 reg 15 (substituted by SI 2009/1309).

## 1010. Protection of British sea fishery officers.

A British<sup>1</sup> or foreign sea fishery officer<sup>2</sup> will not be liable in any civil or criminal proceedings for anything done in purported exercise of his statutory powers<sup>3</sup> if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it<sup>4</sup>.

Any person who on any fishing boat<sup>5</sup> within British fishery limits<sup>6</sup>, or on a British fishing boat<sup>7</sup> anywhere outside those limits or, in relation to trans-shipment<sup>8</sup>, any person who on any vessel within British fishery limits: (1) fails without reasonable excuse to comply with any requirement imposed, or to answer any question asked, by a British sea fishery officer under his statutory powers<sup>9</sup>; or (2) prevents, or attempts to prevent, any other person from complying with any such requirement or answering any such question<sup>10</sup>; or (3) assaults any such officer while exercising any of the statutory powers<sup>11</sup> or wilfully obstructs any such officer in the exercise of any of those powers<sup>12</sup>, is guilty of an offence<sup>13</sup>.

1 As to British sea fishery officers see para 963 ante.

2 For the meaning of 'foreign sea fishery officer' see para 1003 note 3 ante.

3 I.e. the powers conferred on a British sea fishery officer by the Sea Fisheries Act 1968 ss 8, 9 (both as amended) (see paras 1002-1003 ante), the Sea Fish Conservation Act 1967 s 15 (as amended) (see para 1006 ante) or the Fisheries Act 1981 s 27 (see para 1008 ante) and, in the case of a foreign sea fishery officer, the Sea Fisheries Act 1968 s 9 (as amended) (see para 1003 ante).

4 Ibid s 10(1) (substituted by the Fisheries Act 1981 s 26(4)). A British sea fishery officer is given the same protection under the British Fishing Boats Act 1983: see s 4(2). As to the exercise of powers under the British Fishing Boats Act 1983 see para 1002 ante.

5 For the meaning of 'fishing boat' see para 990 note 3 ante.

6 As to British fishery limits see para 961 ante.

7 For the meaning of 'British fishing boat' see para 990 note 5 ante.

8 As to trans-shipment see paras 986-1008 ante.

9 Sea Fisheries Act 1968 s 10(2)(a), (2A)(a) (s 10(2)(a), (c) amended, and s 10(2A) added, by the Fisheries Act 1981 s 26(5), (6)). The powers are those under the Sea Fisheries Act 1968 ss 8, 9 (both as amended) (see paras 1002-1003 ante) and the Fisheries Act 1981 s 27 (see para 1008 ante).

10 Sea Fisheries Act 1968 s 10(2)(b), (2A)(b) (as added: see note 9 supra).

11 I.e. any of the powers conferred on him by or by virtue of ibid ss 8, 9 (both as amended) (see paras 1002-1003 ante) or the Fisheries Act 1981 s 27 (see para 1008 ante).

12 Sea Fisheries Act 1968 s 10(2)(c), (2A)(c) (s 10(2)(c) as amended, and s 10(2A)(c) as added: see note 9 supra).

13 Ibid s 10(2) (s 10(2), (3) amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 17(1)); Sea Fisheries Act 1968 s 10(2A) (as added: see note 9 supra). As to jurisdiction to try the offence see para 1019 post. Section s 10(2) (as amended) applies in relation to things done on a British fishing boat anywhere within the convention area (see para 1003 note 7 ante) outside British fishery limits by or in relation to a foreign sea fishery officer who is exercising powers to enforce the provisions of the convention relating to that area as it applies in relation to things done on any fishing boat within those limits by or in relation to a British sea fishery officer: s 10(3) (as so amended). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a fine: s 10(4) (amended by the Fisheries Act 1981 s 24(3)). As to recovery of fines and compensation see para 1017 post.

## UPDATE

### 1002-1020 Enforcement and Offences

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1002-1010 Powers of Sea Fisheries Officers**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1008-1013 Enforcement of orders relating to trans-shipment of fish ... Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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## ***B. POWERS OF FISHERIES OFFICERS OF LOCAL FISHERIES COMMITTEES AND OTHERS***

### **1011. Enforcement of fish size orders.**

The following persons have the powers set out below for the purpose of enforcing orders restricting fish sizes<sup>1</sup> and the statutory prohibition on the possession of fish which are the subject of such orders<sup>2</sup>:

- (1) any officer authorised by the Secretary of State or the Welsh Ministers<sup>3</sup>;
- (2) any British sea fishery officer<sup>4</sup>;
- (3) any police officer<sup>5</sup>;
- (4) any officer of a market authority<sup>6</sup> acting within the limits of any market which that authority has power to regulate<sup>7</sup>;
- (5) any fishery officer of a local fisheries committee<sup>8</sup> acting within the district of the committee<sup>9</sup>;
- (6) any officer authorised by the Fishmongers' Company<sup>10</sup> and acting within the City of London<sup>11</sup>.

Any such officer may at all reasonable times go on board any fishing boat<sup>12</sup> or enter any premises used for carrying on any business in connection with the treatment, storage or sale of sea fish<sup>13</sup>; he may search for and examine any sea fish in any place, whether on board a fishing boat or elsewhere, and whether in a receptacle or not; and he may seize any sea fish landed, sold or exposed or offered for sale by any person in contravention of an order restricting fish

sizes<sup>14</sup>, or which any person has unlawfully<sup>15</sup> in his possession<sup>16</sup>. Any person who assaults an officer who is exercising any of the powers conferred on him<sup>17</sup> or wilfully obstructs an officer in the exercise of any of those powers is guilty of an offence<sup>18</sup>. An officer is not liable in any criminal or civil proceedings for anything done in the purported exercise of the powers conferred on him<sup>19</sup> if the court is satisfied that the act was done in good faith and there were reasonable grounds for doing it<sup>20</sup>.

1     le orders under the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended): see para 988 ante.

2     le the prohibition in ibid s 2 (as amended): see para 988 ante.

3     See ibid s 16(1)(a). As to the Secretary of State and the Welsh Ministers see para 846 ante.

4     Ibid s 16(1)(aa) (added by the Fisheries Act 1981 s 25(3)). For the meaning of 'British sea fishery officer' see para 993 note 1 ante.

5     Sea Fish (Conservation) Act 1967 s 16(1)(b).

6     'Market authority' means any person having power to regulate a market: ibid s 22(1).

7     Ibid s 16(1)(c).

8     As to local fisheries committees and their membership see paras 964-965 ante.

9     Sea Fish (Conservation) Act 1967 s 16(1)(d). For the purposes of s 16 (as amended), the district of a local fisheries committee is deemed to extend throughout the area of any council liable to pay, or contribute to the payment of, the expenses of the committee, except that the powers conferred by s 16 (as amended) on the committee or any officer of the committee are not exercisable in respect of any matter arising within the limits of any market under council control: s 16(2); Local Government Act 1972 ss 1(10), 179(3). As to the control of markets by district councils see MARKETS, FAIRS AND STREET TRADING. As to the institution of proceedings by local fisheries committees see para 973 ante.

10    'The Fishmongers' Company' means the wardens and commonalty of the Mystery of Fishmongers in the City of London: Sea Fish (Conservation) Act 1967 s 22(1). See also CORPORATIONS vol 9(2) (2006 Reissue) para 1311.

11    Ibid s 16(1)(e).

12    For the meaning of 'fishing boat' see para 969 note 4 ante.

13    For the meaning of 'sea fish' see para 969 note 3 ante.

14    le in contravention of the Sea Fish (Conservation) Act 1967 s 1 (as substituted and amended): see para 988 ante.

15    le in contravention of ibid s 1 (as substituted and amended) or s 2 (as amended): see para 988 ante.

16    Ibid s 16(1).

17    le the powers conferred on an officer by ibid s 16(1) (as amended): see the text and notes 1-16 supra.

18    Ibid s 16(1A) (added by Fisheries Act 1981 s 25(4)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction or on indictment to a fine: Sea Fish (Conservation) Act 1967 s 16(1A) (as so added; and amended by the Criminal Justice Act 1991 s 17(3) (c), Sch 4 Pt III).

19    See note 17 supra.

20    Sea Fish (Conservation) Act 1967 s 16(3) (added by the Fisheries Act 1981 s 25(5)).

## UPDATE

### 1002-1020 Enforcement and Offences

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1008-1013 Enforcement of orders relating to trans-shipment of fish ... Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1011-1013 Powers of Fisheries Officers of Local Fisheries Committees and Others**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1011 Enforcement of fish size orders**

TEXT AND NOTE 9--Sea Fish (Conservation) Act 1967 s 16(1)(d), (2) repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTE 18--Sea Fish (Conservation) Act 1967 s 16(1A) substituted, s 16(1B) added: Marine and Coastal Access Act 2009 s 199(4).

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### **1012. Powers and privileges of fishery officers of local committees.**

For the enforcement of the provisions of any byelaw made by a local fisheries committee<sup>1</sup>, a fishery officer appointed by the committee<sup>2</sup> is deemed to be and to have all the powers and privileges of a constable and is subject to the liabilities<sup>3</sup> of a duly appointed constable<sup>4</sup>. He is also empowered within the limits of the district, or of any adjoining sea fisheries district, or district under the jurisdiction of the Environment Agency<sup>5</sup> or of a harbour authority<sup>6</sup>, to stop and search any vessel<sup>7</sup> or vehicle used within the district in fishing or in conveying either fish or any substance the deposit or discharge of which is prohibited or regulated by any such byelaw<sup>8</sup>, and examine any instrument used in fishing for fish and search any container used in carrying fish<sup>9</sup>, and seize any sea fish<sup>10</sup> or instrument taken or used in contravention of any such byelaw<sup>11</sup>.

If a justice of the peace is satisfied by information on oath that there is probable cause to suspect that a breach of such a byelaw has been committed on any premises or that any sea fish or instrument taken or used in contravention of any such byelaw is concealed on any premises, he may grant a warrant to any appointed<sup>12</sup> fishery officer or any police officer

empowering him to enter and search the premises, at such times in the day or night as may be specified in the warrant, for the purpose of detecting the offence or the concealed fish or instrument and to seize any such fish or instrument which may be found on the premises<sup>13</sup>.

With a view to enforcing any order regulating nets and other fishing gear<sup>14</sup>, any fishery officer of a local fisheries committee may, within the committee's district, go on board any relevant British fishing boat or Scottish fishing boat<sup>15</sup> registered in the United Kingdom<sup>16</sup> and search for and examine all nets or other fishing gear carried in that boat, and may seize any net or other fishing gear in respect of which a contravention of such an order has been, or is being, committed<sup>17</sup>.

1 As to local fisheries committees and their membership see paras 964-965 ante. As to the powers of such a committee to make byelaws see para 974 ante.

2 As to the appointment and duties of a fishery officer of a local fisheries committee see para 966 ante.

3 I.e. the powers, privileges and liabilities which a constable has and is subject to at common law or by statute: Sea Fisheries Regulation Act 1966 s 10(3). As to such powers etc see POLICE vol 36(1) (2007 Reissue) para 101 et seq.

4 Ibid s 10(3).

5 This provision, as originally enacted, related to river authorities. As to the devolution of functions to the Environment Agency see para 847 ante.

6 For the meaning of 'harbour authority' see para 964 note 8 ante.

7 For the meaning of 'vessel' see para 966 note 4 ante.

8 Sea Fisheries Regulation Act 1966 s 10(2)(a).

9 Ibid s 10(2)(b).

10 For the meaning of 'sea fish' see para 975 note 4 ante. The references to sea fish in the Sea Fisheries Regulation Act 1966 s 10(2)(c) and s 12 are deemed to include references to salmon: see the Salmon Act 1986 s 37(4); and para 974 note 4 ante.

11 Sea Fisheries Regulation Act 1966 s 10(2)(c).

12 I.e. appointed under ibid s 10: see para 966 ante.

13 Ibid s 12(1). The warrant may not continue in force for more than one week from the date of the warrant: s 12(2). See note 10 supra.

14 I.e. an order made under the Sea Fish (Conservation) Act 1967 s 3 (as amended): see para 980 et seq ante.

15 For the meanings of 'relevant British fishing boat' and 'Scottish fishing boat' see para 969 note 4 ante.

16 For the meaning of 'United Kingdom' see para 843 note 1 ante. As to registration see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 254 et seq.

17 Sea Fish (Conservation) Act 1967 s 17 (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 43).

## UPDATE

### 1002-1020 Enforcement and Offences

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.



**1008-1013 Enforcement of orders relating to trans-shipment of fish ...  
Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

**1011-1013 Powers of Fisheries Officers of Local Fisheries Committees and Others**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

**1012-1013 Powers and privileges of fishery officers of local committees,  
Obstruction of fishery officers**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

**1012 Powers and privileges of fishery officers of local committees**

TEXT AND NOTES 1-13--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

TEXT AND NOTE 17--Sea Fish (Conservation) Act 1967 s 17 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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**1013. Obstruction of fishery officers.**

If any person without reasonable excuse<sup>1</sup> refuses to allow a fishery officer<sup>2</sup> to exercise his statutory powers<sup>3</sup>, or resists or obstructs him in the performance of his duty, he is guilty of an offence<sup>4</sup>.

1 The burden of proof as to the reasonable excuse lies on the defendant: see the Sea Fisheries Regulation Act 1966 s 11(1).

2 As to the appointment and duties of a fishery officer of a local fisheries committee see para 966 ante.

3 As to the powers conferred on him by the Sea Fisheries Regulation Act 1966: see para 1012 ante.

4 Ibid s 11(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 11(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante. As to jurisdiction when an offence is committed on the sea coast or at sea see the Sea Fisheries Regulation Act 1966 s 11(7); and para 1019 post.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1008-1013 Enforcement of orders relating to trans-shipment of fish ... Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1011-1013 Powers of Fisheries Officers of Local Fisheries Committees and Others**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

### **1012-1013 Powers and privileges of fishery officers of local committees, Obstruction of fishery officers**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1013 Obstruction of fishery officers**

TEXT AND NOTES--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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### **1013A. Fisheries enforcement powers.**

The Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287) provides new powers that may be exercised for the purposes of enforcing sea fisheries legislation.

For Crown application see Marine and Coastal Access Act 2009 s 295.

For further provision as to enforcement under the Marine and Coastal Access Act 2009 see WATER AND WATERWAYS vol 100 (2009) PARAS 30F-30I.

#### **1. Inspection and seizure of objects at sea**

For the purposes of carrying out any relevant functions, an enforcement officer who has the power conferred by the Marine and Coastal Access Act 2009 s 264 may inspect any object in the sea which the officer believes has been or is being used for or in connection with fishing: s 264(1). 'Relevant function', in relation to an enforcement officer, means any function of that officer: Marine and Coastal Access Act 2009 s 287. For the meaning of 'sea' see Marine and Coastal Access Act 2009 s 322(1). The officer may lift an object out of the sea for the purposes of inspecting it under s 264: s 264(1). An enforcement officer who has inspected an object under s 264 may seize the object: s 264(2). The power conferred by s 264(2) may only be exercised (1) for the purposes of determining whether a relevant offence has been committed, or (2) in relation to an object which an enforcement officer reasonably believes to be evidence of the commission of a relevant offence: s 264(3). 'Relevant offence', in relation to an enforcement officer, means any offence in respect of which the officer has functions: s 287. If, having inspected an object under s 264, the officer decides not to seize it under s 264(2), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found: s 264(4). If it is not reasonably practicable to replace the object in accordance with s 264(4), the officer may seize the object until such time as it may be collected by its owner: s 264(5). Any power conferred by s 264 to seize an object includes power to seize (a) anything that is attached to the object; (b) anything that is contained within the object: s 264(6). Any reference in s 264 to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea: s 264(7). The powers conferred on an enforcement officer by s 264 are without prejudice to any powers exercisable by the officer apart from s 264: s 264(8).

Provision is made as to the reporting requirements that an enforcement officer must follow after inspecting objects under s 264: see Marine and Coastal Access Act 2009 s 265.

Any object seized by an enforcement officer under s 264(2) may be retained by the relevant authority: see Marine and Coastal Access Act 2009 s 266. 'Relevant authority' means (i) in relation to the seizure of any object or property by an enforcement officer, the person or body on whose behalf the officer who seized it was acting; (ii) in relation to the detention of a vessel by an enforcement officer, the person or body on whose behalf the officer who detained the vessel was acting: s 287. 'Vessel' includes any ship or boat or any description of vessel used in navigation: s 287.

Arrangements are set out for the disposal of objects seized under s 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection: see Marine and Coastal Access Act 2009 s 267.

## **2. Seizure for purposes of forfeiture**

An enforcement officer who has the power conferred by the Marine and Coastal Access Act 2009 s 268 may seize and detain or remove any fish in respect of which the officer reasonably believes a relevant offence has been committed: Marine and Coastal Access Act 2009 s 268(1). 'Fish' includes shellfish; and 'shellfish' includes crustaceans and molluscs of any kind: Marine and Coastal Access Act 2009 s 287. For the meaning of 'relevant offence' see PARA 1013A.1. The power conferred by s 268 may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fish in respect of which the offence was committed: s 268(2). 'Relevant power of forfeiture' means any power of a court to order the forfeiture of any fish in respect of which an offence has been committed: s 268(8). Where (1) any fish which an enforcement officer wishes to seize and remove are in a container, and (2) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they remained in the container for that purpose, any power to seize and remove the fish includes power to seize and remove the container: s 268(3). Where (a) any fish which an enforcement officer wishes to seize and remove are not in a container, and (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they were placed in a container suitable for that purpose, the officer may require the fish to be placed into such a container: s 268(4). If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fish, the officer may require (i) the person from whom the fish are being seized, or (ii) where the officer is exercising a power of inspection conferred by the Marine and Coastal Access Act 2009 s 246, 247 or 248 (see WATER AND WATERWAYS vol 100 (2009) PARA 30G.1), any person in or on the relevant premises, to secure that the fish are not removed or otherwise interfered with until such time as the officer may seize and remove them: s 268(5). 'The relevant premises', in relation to an enforcement officer exercising a power of inspection conferred by s 246, 247 or 248, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised: s 268(8). For the meaning of 'vessel' see PARA 1013A.1. Where an enforcement officer is exercising a power of inspection conferred by s 246, 247 or 248, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by s 268: s 268(6). Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by s 268: s 268(7). 'Relevant activity', in relation to an enforcement officer, means any activity in respect of which the officer has functions: s 268(8).

Similar provision is made with respect to the power to seize fishing gear for purposes of forfeiture: see Marine and Coastal Access Act 2009 s 269.

Provision is made with respect to the procedure in relation to seizure under the Marine and Coastal Access Act 2009 s 268 or 269: see Marine and Coastal Access Act 2009 s 270. Any property seized by an enforcement officer under s 268 or 269 may be retained by the relevant authority: see Marine and Coastal Access Act 2009 s 271. For the meaning of 'relevant authority' see PARA 1013A.1. The owner of any property (or the owner or charterer of the vessel if the property was seized from there) seized under s 268 or 269 and being retained under s 271 may lodge a bond with the relevant authority in return for its release: see Marine and Coastal Access Act 2009 s 272. Any fish which are being retained by the relevant authority under s 271 may be sold by the authority: see Marine and Coastal Access Act 2009 s 273. Provision is made with respect to the disposal of property seized under s 268 or 269: see Marine and Coastal Access Act 2009 s 274.

## **3. Forfeiture**

Any item to which the Marine and Coastal Access Act 2009 s 275 applies is liable to forfeiture under s 275 if the use of that item for sea fishing would in any circumstances constitute an offence under the law of England and Wales: s 275(1). Section 275 applies to any item seized on board a vessel or from the sea by an enforcement officer in the exercise of any power conferred by the Marine and Coastal Access Act 2009: s 275(2). For the meaning of 'vessel' see PARA 1013A.1. For the meaning of 'sea' see Marine and Coastal Access Act 2009 s 322(1). Any item forfeited under s 275 is to be forfeited to the relevant authority and may be disposed of by that authority in any manner it thinks fit: s 275(3). For the meaning of 'relevant authority' see PARA 1013A.1.

Any fish to which the Marine and Coastal Access Act 2009 s 276 applies are liable to forfeiture under s 276 if, by virtue of the fish failing to meet requirements as to size, an offence under the law of England and Wales has been committed in respect of the fish: s 276(1). For the meaning of 'fish' see PARA 1013A.2. Section 276 applies to fish seized by an enforcement officer in the exercise of any power conferred by the Marine and Coastal Access Act 2009: s 276(2). Any fish forfeited under s 276 are to be forfeited to the relevant authority and may be disposed of by that authority in any manner it thinks fit: s 276(3).

The Marine and Coastal Access Act 2009 Sch 18 (which makes provision in relation to the forfeiture of property liable to forfeiture under s 275 or 276) has effect: Marine and Coastal Access Act 2009 s 277.

The Marine and Coastal Access Act 2009 s 278 applies where a court by or before which a person is convicted of an offence under the fisheries legislation orders the forfeiture of any fish or any fishing gear in respect of that offence: s 278(1). 'The fisheries legislation' means (1) any enactments relating to sea fishing (including any enactment relating to fishing for shellfish, salmon or migratory trout); (2) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing: s 278(6). 'Enforceable EU obligation' means an obligation to which the European Communities Act 1972 s 2(1) applies; and 'enforceable EU restriction' means a restriction to which the European Communities Act 1972 s 2(1) applies: Marine and Coastal Access Act 2009 s 278(6). The court must order that the property to be forfeited is to be taken into the possession of the person or body by whom proceedings for the offence were brought: s 278(2). The property may be disposed of as that person or body thinks fit: s 278(3). Any proceeds arising from the disposal of the property may be retained by the person or body: s 278(4). The court may order any person convicted of the offence to pay any costs reasonably incurred by any person or body in storing the property that is to be forfeited: s 278(5).

#### **4. Detention of vessels in connection with court proceedings**

The Marine and Coastal Access Act 2009 s 279 applies where (1) an enforcement officer has reasonable grounds for suspecting that a relevant offence has been committed by the master, owner or charterer of a vessel, and (2) the officer reasonably believes that (a) if proceedings are taken against the person for the offence, there is a real risk that the person will not attend court unless the vessel is detained under s 279, or (b) if the person is convicted of the offence and the court by or before which the person is convicted imposes a fine on that person, it is likely that the court will order the vessel to be detained: s 279(1). For the meaning of 'relevant offence' and 'vessel' see PARA 1013A.1. Where s 279 applies, an enforcement officer who has the power conferred by s 279 may take, or arrange for another person to take, the vessel and its crew to the port which appears to the officer to be the nearest convenient port, or require any person who is for the time being in charge of the vessel to take it and its crew to that port: s 279(2). When a vessel has been taken to a port in pursuance of s 279, the officer may (i) detain it there, or (ii) require the person for the time being in charge of it to do so: s 279(3). An enforcement officer who detains any vessel under s 279 must, if it is reasonably practicable to do so, serve a notice on (A) the owner of the vessel, (B) the charterer (if any) of the vessel, and

(c) the person who is for the time being in charge of the vessel: s 279(4). 'Notice' means notice in writing: Marine and Coastal Access Act 2009 s 322(1). The notice must state (aa) the reasons for detaining the vessel; (bb) the circumstances in which the vessel may be released: s 279(5). As to service of notices under the Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287) see Marine and Coastal Access Act 2009 s 285.

Provision is made for the release of a vessel which is being detained under s 279 (see Marine and Coastal Access Act 2009 s 280) and the power of the court to order the release of the vessel (see Marine and Coastal Access Act 2009 s 281).

Where a vessel is being detained under s 279, the relevant authority may enter into an agreement with the owner or charterer, or any of the owners or charterers, of the vessel for security for the vessel to be given to the relevant authority by way of bond in return for the withdrawal of the notice of detention: see Marine and Coastal Access Act 2009 s 282. For the meaning of 'relevant authority' see PARA 1013A.1. Where a bond has been paid pursuant to s 282 (and the notice of detention withdrawn) the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel: see Marine and Coastal Access Act 2009 s 283.

## **5. Production of equipment**

An enforcement officer who has the power conferred by the Marine and Coastal Access Act 2009 s 284 may require any person on board a vessel to produce any equipment falling within s 284(2): s 284(1). For the meaning of 'vessel' see PARA 1013A.1. The equipment referred to in s 284(1) is (1) any automatic recording equipment or transmitting equipment used in accordance with a condition included in a licence by virtue of the Sea Fish (Conservation) Act 1967 s 4(6) or 4A(6) (see PARAS 984, 987); (2) any equipment which is required to be carried on board a vessel by virtue of a byelaw made by an inshore fisheries and conservation authority under the Marine and Coastal Access Act 2009 s 155 (see PARA 966A.4); (3) any equipment which is required to be carried on board a vessel by virtue of an order made by the Welsh Ministers under the Marine and Coastal Access Act 2009 s 189 (see PARA 966B): s 284(2).

## **6. Conclusion of proceedings**

The Marine and Coastal Access Act 2009 s 286 applies for determining when any proceedings have concluded for the purposes of the Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287): s 286(1). Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded (1) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or (2) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal: s 286(2). An appealable decision is a decision of a description against which an appeal will lie, whether by way of case stated or otherwise and whether with or without permission: s 286(5). Any reference in s 286 to an appeal includes a reference to an application for permission to appeal: s 286(6). Section 286(2) applies for determining, for the purposes of head (2), when proceedings on an appeal are concluded as it applies for determining when the original proceedings are concluded: s 286(3). Any reference in s 286(2) to a decision which terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings: s 286(4).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

**1008-1013 Enforcement of orders relating to trans-shipment of fish ...  
Obstruction of fishery officers**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

**1011-1013 Powers of Fisheries Officers of Local Fisheries Committees and Others**

For fisheries enforcement powers see Marine and Coastal Access Act 2009 Pt 8 Ch 4 (ss 264-287); and PARA 1013A.

**1012-1013 Powers and privileges of fishery officers of local committees,  
Obstruction of fishery officers**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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***C. OFFENCES, PENALTIES AND COMPENSATION***

**1014. Liquor traffic in the North Sea.**

In the limits of the North Sea<sup>1</sup> but outside territorial waters<sup>2</sup> any person on board or belonging to a British vessel who supplies spirituous liquors<sup>3</sup> to any person on board or belonging to a sea fishing boat, and any person on board or belonging to a British sea fishing boat who purchases spirituous liquors, commits an offence<sup>4</sup>.

If within the same limits any person on board or belonging to a British vessel deals with any person on board or belonging to a sea fishing boat in any provisions or other articles for his use, except spirituous liquors, without a licence<sup>5</sup> or without carrying the agreed mark<sup>6</sup> on his vessel, or in contravention of any conditions of such a licence, he commits an offence<sup>7</sup> and his licence may be revoked<sup>8</sup>.

1 See the North Sea Fisheries Act 1893 s 9. This Act implements (and sets out in the Schedule) the Convention respecting the Liquor Traffic in the North Sea (The Hague, 16 November 1887; TS (1894); C 7354). See para 960 ante.

2 'Territorial waters' means the territorial waters of Her Majesty's dominions so defined by the Territorial Waters Jurisdiction Act 1878: North Sea Fisheries Act 1893 s 9.

3 'Spiruous liquors' includes every liquid obtained by distillation and containing more than 5 per centum of alcohol: *ibid* s 9.

4 *Ibid* ss 2, 3. For the powers of a British sea fishery officer to enforce this Act see s 6; and para 1005 ante. As to evidence see s 8.

The penalties for contravention of ss 2, 3 are:

(1) if liquors are supplied in exchange for any article not belonging to the person supplied, a fine not exceeding level 3 on the standard scale, or (until a day to be appointed), in the discretion of the court, to imprisonment for a term not exceeding three months (North Sea Fisheries Act 1893 s 2(a) (ss 2(a), (b), 3(a), (b) amended by virtue of the Criminal Justice Act 1982 ss 38, 46; North Sea Fisheries Act 1893 ss 2(a), (b), 3(a) prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9));

(2) if liquors are sold otherwise than by way of exchange for any such article, a fine not exceeding level 2 on the standard scale, or (until a day to be appointed), in the discretion of the court, to imprisonment for a term not exceeding three months (North Sea Fisheries Act 1893 s 2(b) (as so amended and prospectively amended));

(3) if any article not belonging to the person is given in exchange for the liquors, a fine not exceeding level 3 on the standard scale, or, in the discretion of the court, to imprisonment for a term not exceeding three months (s 3(a) (as so amended and prospectively amended)); and

(4) if liquors are purchased otherwise than by way of exchange for any such article, a fine not exceeding level 1 on the standard scale (s 3(b) (as so amended)).

As from a day to be appointed the punishment of imprisonment for a term not exceeding three months is no longer available in respect of the offences referred to in heads (1)-(3) above, and all the offences referred to above are instead punishable only by the specified fine: ss 2(a), (b), 3(a) (as so prospectively amended). At the date at which this volume states the law no such day had been appointed. As to the standard scale see para 841 note 4 ante.

5 *Ie* a licence granted under the Convention respecting the Liquor Traffic in the North Sea (The Hague, 16 November 1887; TS (1894); C 7354) art III.

6 *Ie* the mark agreed upon by the high contracting powers in pursuance of *ibid* art III.

7 Such an offence is punishable with a fine not exceeding level 2 on the standard scale: North Sea Fisheries Act 1893 s 4 (amended by virtue of the Criminal Justice Act 1982 s 46).

8 North Sea Fisheries Act 1893 s 4 (as amended: see note 7 *supra*). Regulations regarding licences may be made by Orders in Council: see s 5. See Order in Council making Regulations under section 5 of the North Sea Fisheries Act 1893, SI 1894/121, under which, subject to certain conditions, licences may be issued on the written application of the owner of a vessel.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1014 Liquor traffic in the North Sea**



TEXT AND NOTES--North Sea Fisheries Act 1893 repealed: Marine and Coastal Access Act 2009 s 234(d), Sch 22 Pt 5.

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### **1015. Offences against the Sea Fish (Conservation) Act 1967.**

Persons found guilty of offences under the Sea Fish (Conservation) Act 1967 are liable on conviction to fines to a level dependent on the specific offences committed<sup>1</sup>. The court also has power to order the forfeiture of any fish, net or gear<sup>2</sup>, or, in lieu of the forfeiture of fish, may impose an additional fine not exceeding the value of the fish in respect of which the offence was committed<sup>3</sup>. Offences under the Sea Fish (Conservation) Act 1967 may for all incidental purposes be treated as having been committed in the United Kingdom<sup>4</sup>.

1 See the Sea Fish (Conservation) Act 1967 s 11(1) (s 11(1)-(3) substituted by the Fisheries Act 1981 s 24(1); and the Sea Fish (Conservation) Act 1967 s 11(1) amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III; and the Sea Fish (Conservation) Act 1992 s 5). As to offences relating to the licensing of fishing boats under the Sea Fish (Conservation) Act 1967 s 4 (as substituted and amended) see para 983 ante. As to offences relating to the trans-shipment of fish under s 4A (as added and amended) see para 986 ante. As to offences relating to fishing for sea fish under s 5 (as amended) see para 989 ante. As to offences relating to the landing of sea fish under s 6 (as amended) see para 992 ante.

2 See *ibid* s 11(2) (as substituted: see note 1 *supra*).

3 See *ibid* s 11(3)-(5) (s 11(3) as substituted: see note 1 *supra*).

4 See *ibid* s 14 (substituted by Fisheries Act 1981 s 29); and see para 1019 post.

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1015 Offences against the Sea Fish (Conservation) Act 1967**

TEXT AND NOTES 1-3--Sea Fish (Conservation) Act 1967 s 11 further amended, Sea Fish (Conservation) Act 1992 s 5 partly repealed: Marine and Coastal Access Act 2009 s 199(2), Sch 15 para 4, Sch 22 Pt 5.

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### **1016. Offences by corporations.**

Where certain offences consisting of a breach of byelaws of a local fisheries committee<sup>1</sup> or fishing by unqualified British fishing boats<sup>2</sup> are committed by a body corporate and any such offence is proved to have been committed with the consent, approval or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly<sup>3</sup>. A director, manager, secretary or other officer is also deemed to be guilty where certain offences in connection with size limits for fish<sup>4</sup>, regulation of nets and other fishing gear<sup>5</sup>, licensing of fishing boats<sup>6</sup>, trans-shipment of fish<sup>7</sup>, restrictions on fishing for sea fish<sup>8</sup> and prohibitions on the landing of sea fish<sup>9</sup> are committed by a body corporate and proved to have been committed with that person's consent or approval<sup>10</sup>.

1       Ie offences under the Sea Fisheries Regulation Act 1966 s 11(2) or (5) (as amended): see para 978 ante. As to local fisheries committees and their membership see paras 964-965 ante.

2       Ie offences under the British Fishing Boats Act 1983 s 1 (as amended) (see para 982 ante) or s 4 (see para 1007 ante).

3       See the Sea Fisheries Regulation Act 1966 s 11(6); and the British Fishing Boats Act 1983 s 6.

4       Ie offences under the Sea Fish (Conservation) Act 1967 s 1(1)-(3) (as substituted and amended): see para 988 ante.

5       Ie offences under *ibid* s 3 (as amended): see para 980 ante.

6       Ie offences under *ibid* s 4 (as substituted and amended): see para 983 ante.

7       Ie offences under *ibid* s 4A (as added and amended): see para 986 ante.

8       Ie offences under *ibid* s 5 (as amended): see para 989 ante.

9       Ie offences under *ibid* s 6 (as amended): see para 992 ante.

10       See *ibid* s 12 (amended by the Fisheries Act 1981 ss 19(2)(c), 28).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

## **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

## **1016 Offences by corporations**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTES 1-3--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

NOTE 10--Sea Fish (Conservation) Act 1967 s 12 substituted: Marine and Coastal Access Act 2009 s 200.

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## **1017. Recovery of fines and compensation.**

Where a fine is imposed by a magistrates' court in England and Wales or Northern Ireland on the master<sup>1</sup>, owner or charterer or a member of the crew of a fishing boat<sup>2</sup> who is convicted by the court of an offence against the provisions regulating the conduct of fishing operations<sup>3</sup>, or restricting fishing within British fishery limits<sup>4</sup>, or by British fishing boats<sup>5</sup> or prohibiting the obstruction of British sea fishery officers<sup>6</sup>, the court may recover the fine by prescribed means<sup>7</sup>. Thus it may issue a warrant of distress against the boat and its gear and catch, and any property of the person convicted, for the purpose of levying the amount of the fine<sup>8</sup>. If the boat is a foreign fishing boat<sup>9</sup> it may also order it to be detained for a period not exceeding three months from the date of conviction or until the fine is paid or the amount of the fine is levied in pursuance of any such warrant, whichever occurs first<sup>10</sup>.

1 As to the meaning of 'master' see para 990 note 9 ante.

2 For the meaning of 'fishing boat' see para 990 note 3 ante.

3 Is an offence against the Sea Fisheries Act 1968 s 5 (as amended) (see para 990 ante) or s 10 (as amended) (see para 1010 ante).

4       le an offence against the Fishery Limits Act 1976 s 2 (as amended): see para 998 et seq ante. As to British fishery limits see para 961 ante.

5       le an offence against the British Fishing Boats Act 1983 s 1 (as amended): see para 982 ante.

6       le an offence against the Sea Fisheries Act 1968 s 10 (as amended) (see para 1010 ante) or the British Fishing Boats Act 1983 s 4 (see paras 1007, 1010 ante).

7       Sea Fisheries Act 1968 s 12(1) (amended by the Fishery Limits Act 1976 s 2(8)(d)); British Fishing Boats Act 1983 s 5(1).

8       Sea Fisheries Act 1968 s 12(1)(a); British Fishing Boats Act 1981 s 5(1)(a). The Magistrates' Courts Act 1980 ss 77(1), 78 (as amended) (postponement of issue of, and defects in, warrants of distress: see MAGISTRATES vol 29(2) (Reissue) para 860) apply to a warrant of distress issued under the Sea Fisheries Act 1968 s 12 (as amended) or the British Fishing Boats Act 1983 s 5 (as amended) in England and Wales as they apply to a warrant of distress issued under the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended): Sea Fisheries Act 1968 s 12(3) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 77); British Fishing Boats Act 1983 s 5(3).

9       For the meaning of 'foreign fishing boat' see para 990 note 7 ante. This provision also applies to fishing boats under the British Fishing Boats Act 1983: see s 5(1)(b).

10       Sea Fisheries Act 1968 s 12(1)(b); British Fishing Boats Act 1983 s 5(1)(b).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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## **D. LEGAL PROCEEDINGS**

### **1018. Power of taking proceedings.**

The powers of enforcement conferred upon any authorities or officers by any Act relating to salmon and freshwater fisheries<sup>1</sup> do not limit or take away the power of any other person to take legal proceedings for the enforcement of any such Act or of byelaws under it<sup>2</sup>.

1 See para 844 et seq ante.

2 Fisheries Act 1891 s 13 (amended by the Sea Fisheries Regulation Act 1966 ss 21, 22(2), Schedule Pt I; and the Sea Fisheries Act 1968 s 22(1), (2), Sch 1 Pt II, Sch 2 Pt II).

## UPDATE

### 1002-1020 Enforcement and Offences

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### 1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 1018-1020 Legal Proceedings

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### 1018 Power of taking proceedings

TEXT AND NOTES--Fisheries Act 1891 s 13 repealed: Marine and Coastal Access Act 2009 s 234(c), Sch 22 Pt 5.

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### 1019. Jurisdiction of courts.

For the purposes of the statutory provisions relating to size limits for fish<sup>1</sup>, the regulation of nets and other fishing gear<sup>2</sup>, the licensing of British fishing boats<sup>3</sup>, the trans-shipping of fish<sup>4</sup>, the restricting of fishing for sea fish<sup>5</sup>, the prohibition on catching fish in certain areas<sup>6</sup>, and failure to comply with the requirements of a British sea fishery officer<sup>7</sup>, every offence may for all incidental purposes be treated as having been committed in any place in the United Kingdom<sup>8</sup>.

Proceedings for an offence under the statutory provisions regulating the conduct of fishing operations<sup>9</sup>, prohibiting the obstruction of British sea fishery officers<sup>10</sup>, designating access to

British fisheries<sup>11</sup> or fishing when unqualified<sup>12</sup> may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom<sup>13</sup>.

Where an offence of obstructing a fishery officer of a local fisheries committee<sup>14</sup> or of contravening a byelaw of such a committee<sup>15</sup> is committed on the sea coast or at sea beyond the ordinary jurisdiction of a magistrates' court and not on or from a ship or boat<sup>16</sup>, it is deemed to have been committed within the body of any county having a separate commission of the peace which abuts on that sea coast or adjoins that sea, and may be tried and punished accordingly<sup>17</sup>. If a local fisheries committee<sup>18</sup> or any of its officers is duly authorised<sup>19</sup> to bring proceedings for any offence under the statutory provisions relating to oil pollution<sup>20</sup>, the committee may institute proceedings for any offence under those provisions committed within the committee's district<sup>21</sup>.

1       Ie the provisions of the Sea Fish (Conservation) Act 1967 s 1(3) (as amended): see para 988 ante.

2       Ie the provisions of *ibid* s 3 (as amended): see para 980 ante.

3       Ie the provisions of *ibid* s 4 (as amended): see paras 983-984 ante. For the meaning of 'fishing boat' see para 969 note 4 ante.

4       Ie the provisions of *ibid* s 4A (as added and amended): see paras 986-987 ante.

5       Ie the provisions of *ibid* s 5 (as amended): see para 989 ante.

6       Ie the provisions of *ibid* s 6 (as amended): see para 992 ante. As to British fishery limits see para 961 ante.

7       Ie the provisions of *ibid* s 7 (as amended) (see para 993 ante), s 15 (as amended) (see para 1006 ante) or s 16 (as amended) (see para 1011 ante). As to British sea fishery officers see para 748 ante.

8       *Ibid* s 14 (substituted by the Fisheries Act 1981 s 29). For the meaning of 'United Kingdom' see para 843 note 1 ante.

9       Ie an offence against the Sea Fisheries Act 1968 s 5 (as amended): see para 990 ante.

10      Ie an offence against *ibid* s 10 (as amended): see para 1010 ante.

11      Ie an offence against the Fishery Limits Act 1976 s 2 (as amended): see para 998 ante.

12      Ie an offence against the British Fishing Boats Act 1983 s 1 (as amended) (see para 982 ante) or s 4 (see paras 1007, 1010 ante).

13      Sea Fisheries Act 1968 s 14 (amended by the Fishery Limits Act 1976 s 2(8)(d)); British Fishing Boats Act 1983 s 7.

14      Ie an offence under the Sea Fisheries Regulation Act 1966 s 11(1) (as amended): see para 1013 ante. As to local fisheries committees see para 971 *et seq* ante.

15      Ie an offence under *ibid* s 11(5) (as amended): see para 978 ante.

16      As to the effect of the Hovercraft (Application of Enactments) Order 1972, SI 1972/971 (as amended) on the construction of references to ships and boats see para 956 note 4 ante.

17      Sea Fisheries Regulation Act 1966 s 11(7). As to local justice areas see the Courts Act 2003 ss 7, 8 (as amended); and *MAGISTRATES* vol 29(2) (Reissue) para 507.

18      Ie a local fisheries committee constituted by an order made, or having effect as if made, under the Sea Fisheries Regulation Act 1966 s 1 (as amended): see para 964 ante.

19      Ie authorised under the Prevention of Oil Pollution Act 1971 s 19(1): see para 918 ante.

20      Ie any offence under the Prevention of Oil Pollution Act 1971: see s 19(6).

21      *Ibid* s 19(6).

**UPDATE****1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

**1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

**1018-1020 Legal Proceedings**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

**1019 Jurisdiction of courts**

NOTES 14, 17, 18--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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**1020. Evidence.**

In any civil or criminal proceedings a written statement purporting to be a report made by a British<sup>1</sup> or foreign sea fishery officer<sup>2</sup> on matters ascertained in the course of exercising his statutory powers<sup>3</sup> for the purpose of enforcing the provisions of any convention with respect to the conduct or safeguarding of fishing operations to which the United Kingdom is a party<sup>4</sup>, is admissible as evidence to the like extent as oral evidence to the like effect by that officer<sup>5</sup>. A document purporting to be certified by the Secretary of State<sup>6</sup> to be a report made or certificate given in pursuance of his conventional powers<sup>7</sup> is deemed to be such a report or certificate and to have been duly forwarded<sup>8</sup>.

The production of a copy of any byelaw made by a local fisheries committee<sup>9</sup>, purporting to be signed by the Secretary of State or the Welsh Ministers<sup>10</sup>, is conclusive evidence of the byelaw and of its due making and confirmation<sup>11</sup>.

1 As to British sea fishery officers see para 963 ante.

2 As to foreign sea fishery officers see para 1003 note 3 ante.

3 I.e. the powers to enforce conventions conferred by the Sea Fisheries Act 1968 s 9 (as amended), which applies the powers conferred by s 8(2), (3) (as amended): see paras 1002-1003 ante.

4 See *ibid* s 9 (as amended); and para 1002 ante.

5 *Ibid* s 11(1). This provision is to be taken to be in addition to, and not to derogate from, the provisions of any other enactment relating to the reception or admissibility of documentary evidence: s 11(2). As to evidence generally see CIVIL PROCEDURE; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1359 et seq.

6 This provision, as originally enacted, referred to a secretary or assistant secretary of the Board of Trade, whose functions were subsequently transferred to the Secretary of State: see para 846 ante.

7 I.e. given in pursuance of the Declaration respecting the North Sea Fisheries (Brussels, 2 May 1891; TS 1 (1892); C 6587) art III: see para 960 ante.

8 Fisheries Act 1891 s 3.

9 I.e. a byelaw made under the Sea Fisheries Regulation Act 1966: see para 974 ante. As to local fisheries committees see para 971 et seq ante.

10 As to the Secretary of State and the Welsh Ministers see para 846 ante.

11 Sea Fisheries Regulation Act 1966 s 9(2).

## **UPDATE**

### **1002-1020 Enforcement and Offences**

The appropriate national authority may apply fixed administrative penalties to domestic fisheries offences, namely offences which do not originate in Community law: see Marine and Coastal Access Act 2009 s 294.

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

### **1018-1020 Legal Proceedings**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).



## 1020 Evidence

TEXT AND NOTE 11--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630). As to the establishment of inshore fisheries and conservation districts and inshore fisheries and conservation authorities in England see PARA 966A. For provision as to inshore fisheries in Wales see PARA 966B.

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### (vi) British Fishing Vessels and their Crews

#### **A. APPLICABILITY OF MERCHANT SHIPPING LAWS**

##### **1021. Merchant shipping laws and fishing vessels.**

In general the provisions of the statutes relating to merchant ships<sup>1</sup> apply equally to fishing vessels<sup>2</sup>, as do the regulations made under those statutes<sup>3</sup>. Specific provision is made relating to registration of fishing vessels<sup>4</sup>, engagement, discharge and wages of crew of fishing vessels<sup>5</sup>, hours of work<sup>6</sup>, manning and qualifications<sup>7</sup>, offences by seamen<sup>8</sup> and exemptions<sup>9</sup>. Special statutory provision has been made as to the construction and surveying of fishing vessels<sup>10</sup>.

1 In the Merchant Shipping Act 1995: see generally SHIPPING AND MARITIME LAW. In particular, the provisions as to safety and health on ships (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 591 et seq), collisions (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 715 et seq) and reporting of accidents (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 847 et seq) apply to fishing vessels.

2 'Ship' in the Merchant Shipping Act 1995 includes every description of vessel used in navigation: s 313(1). Fishing boats are therefore subject to the provisions of the Merchant Shipping Act 1995 Pt II (ss 8-23) (as amended), which requires the registration of all British ships: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq. Without prejudice to the Merchant Shipping Act 1995 s 236(1) (delivery of wreck to receiver) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 997), fishing boats or fishing gear lost or abandoned at sea and either: (1) found or taken possession of within the territorial waters of the United Kingdom; or (2) found or taken possession of beyond those waters and brought within those waters; are to be treated as wreck for the purposes of the Merchant Shipping Act 1995 Pt IX (ss 224-255) (as amended) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 883 et seq): Sea Fisheries Act 1968 s 17 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 43(b)). For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 See eg the Merchant Shipping (Seamen's Allotments) Regulations 1972, SI 1972/1698; and the Merchant Shipping (Seamen's Wages) (Contributions) Regulations 1972, SI 1972/1699. See further SHIPPING AND MARITIME LAW.

4 See SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 262-266. As to the requirement to carry official papers see the Sea Fisheries Act 1868 s 26 (substituted by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 2).

5 See the Merchant Shipping Act 1995 ss 109-114; and SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 458, 479-483. 'Fishing vessel' means a vessel for the time being used (or, in the context of an application for registration, intended to be used) for, or in connection with, fishing for sea fish other than a vessel used (or intended to be used) for fishing otherwise than for profit; and for the purposes of this definition 'sea fish' includes shellfish, salmon and migratory trout: s 313(1). A vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel: s 313(3).

6 See *ibid* s 115; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 626.

7 See *ibid* s 116; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 502.

8 See *ibid* ss 118-119; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 506; SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1160, 1165.

9 See *ibid* s 120; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 425.

10 See *ibid* ss 121-127 (s 125 as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 594, 604-608. See also the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330 (as amended); and para 1022 post.

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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## ***B. CONSTRUCTION OF FISHING VESSELS***

### **1022. Construction and safety of fishing vessels.**

Detailed rules<sup>1</sup> have been made governing the construction of fishing vessels<sup>2</sup>. The rules apply to mechanically propelled sea-going fishing vessels registered in the United Kingdom<sup>3</sup>. Different rules apply to fishing vessels of different lengths<sup>4</sup> and of different ages<sup>5</sup>.

Certain fishing vessels are required to carry specified satellite-tracking devices<sup>6</sup>, radios<sup>7</sup> and life-saving appliances<sup>8</sup>.

Surveys must be carried out to ensure compliance with safety regulations and certificates issued following a satisfactory survey<sup>9</sup>. No United Kingdom fishing vessel may proceed to sea without a valid certificate<sup>10</sup>.

Further requirements must be met by ships in respect of which trans-shipment licences are in force<sup>11</sup>. Regulations are also in place governing the loading and unloading of fishing vessels<sup>12</sup>.

1 See the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, Pts I, II, IV (rr 1-1B, 2-75, 122) (as amended). See also notes 4-5 *infra*. See also SHIPPING AND MARITIME LAW vol 94 (2008) PARA 604.

2 For the meaning of 'fishing vessel' see para 1021 note 5 *ante*. As to the construction and safety of vessels generally see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 591 *et seq*.

3 Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, r 1(2) (substituted by SI 1998/928; and amended by SI 1999/2998). As to registration in the United Kingdom under the Merchant Shipping Act 1995 see

SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq. For the meaning of 'United Kingdom' see para 843 note 1 ante.

4 Vessels of less than 15 metres length are subject to the Fishing Vessels (Code of Practice for the Safety of Small Fishing Vessels) Regulations 2001, SI 2001/9 (amended by SI 2002/2201). Vessels of between 15 metres and 24 metres length are subject to the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002, SI 2002/2201. Both these regulations require vessels to comply with codes of practice.

5 Fishing vessels of more than 24 metres length built on or after 1 January 1999 are subject to the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998.

6 See the Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004, SI 2004/3226; the Fishing Boats (Satellite-Tracking Devices) (England) Scheme 2004, SI 2004/2467; and the Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006, SI 2006/2799.

7 See the Merchant Shipping (Radio) (Fishing Vessels) Regulations 1999, SI 1999/3210 (amended by SI 2002/2201).

8 See the Fishing Vessels (Life-Saving Appliances) Regulations 1988, SI 1988/38 (amended by SI 1998/927; SI 1999/3210; SI 2001/9; SI 2002/2201). As to the carriage of medical stores see the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995, SI 1995/1802 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 630. As to collisions see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 715 et seq.

9 See the Fishing Vessels (Safety Provisions) Rules 1975, SI 1975/330, Pt V (rr 123-131) (amended by SI 1977/313; SI 1978/1598; SI 1991/1342; SI 1996/2419; SI 1999/2998; SI 1999/3210; SI 2002/2201); and the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998, Pt II (regs 6-16) (amended by SI 1999/3210; SI 2003/1112). See also SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 604-606.

10 See the Merchant Shipping Act 1995 s 125(1) (amended by the Merchant Shipping and Maritime Security Act 1997 s 9, Sch 1 para 3); and the Fishing Vessels (EC Directive on Harmonised Safety Regime) Regulations 1999, SI 1999/2998, reg 13. See also SHIPPING AND MARITIME LAW vol 94 (2008) PARA 607.

11 See the Merchant Shipping Act 1995 ss 100F, 100G (both added by the Merchant Shipping and Maritime Security Act 1997 s 11); and SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 669-670.

12 See the Loading and Unloading of Fishing Vessels Regulations 1988, SI 1988/1656 (amended by SI 2005/735); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 715 et seq.

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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## **C. PROVISIONS RELATING TO CREW**

### **1023. Crew accommodation.**

Detailed regulations<sup>1</sup> have been made governing crew accommodation in fishing vessels<sup>2</sup>. Fishing vessels which do not normally remain away from their home ports for periods of more than 36 hours and on board which the crews do not normally live when in port are exempt from compliance with certain of the regulations<sup>3</sup> on condition that they are provided with adequate sanitary accommodation<sup>4</sup>, messing and cooking facilities and accommodation for resting<sup>5</sup>. The regulations lay down requirements as to the submission to a surveyor of ships of plans of fishing vessels which are being constructed or before any reconstruction or alteration of the vessel's crew accommodation is carried out<sup>6</sup>. The regulations also lay down requirements as to the situation of crew accommodation and structures, and furniture and fittings there<sup>7</sup>; interior bulkheads<sup>8</sup>; overhead and floor decks<sup>9</sup>; access and escape arrangements<sup>10</sup>; pipes etc<sup>11</sup>; awnings<sup>12</sup>; heating<sup>13</sup>, lighting<sup>14</sup>, ventilation<sup>15</sup> and drainage<sup>16</sup>; interior finishes<sup>17</sup>; marking of sleeping room and space in crew accommodation<sup>18</sup>; sleeping rooms and their furniture and fittings<sup>19</sup>; mess rooms and their furniture and fittings<sup>20</sup>; washing accommodation<sup>21</sup>; drinking water<sup>22</sup>; facilities for washing, drying and hanging clothes<sup>23</sup>; water closets<sup>24</sup>; galleys<sup>25</sup>; store rooms and refrigerating equipment<sup>26</sup>; hospitals<sup>27</sup>; medical cabinets<sup>28</sup>; protection from flies and other insects<sup>29</sup>; and the maintenance and inspection of crew accommodation<sup>30</sup>. If the provisions of the regulations are contravened the owner or master of the ship concerned is liable on summary conviction to a fine<sup>31</sup> and the ship, if in the United Kingdom, may be detained<sup>32</sup>.

1 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220 (as amended). As to the power to make regulations as to crew accommodation see the Merchant Shipping Act 1995 s 43; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 485. As to the duty to provide adequate provisions and water on board ship see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 627.

2 'Fishing vessel' includes a fishing research vessel but does not include a fishery protection vessel: Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 1(2). The Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220 (as amended) apply to any mechanically propelled sea-going fishing vessel of 24 metres or more registered length registered on Part II of the Register (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 262 et seq), which either was registered for the first time as a fishing vessel on or after 1 January 1977 or was reconstructed or substantially altered after that date, except a vessel primarily propelled by sail but having auxiliary engines: reg 2(1) (substituted by SI 1998/929). As to the application of the regulations to vessels constructed on or after 23 November 1995 see the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 2(2). The regulations also extend to mechanically propelled sea-going fishing vessels of 24 metres or more registered length which are: (1) wholly owned by a person resident in or by a body corporate having the principal place of business in the United Kingdom; and (2) required to be registered under Part II of the Register but not so registered, and to masters and seamen employed in them: see reg 3 (substituted by SI 1998/929). For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, regs 20-25, 27-32 (as amended) (see the text to notes 4-30 infra), and the requirement in reg 15(2) for an electric lamp to be provided at the head of each bed: see reg 4.

4 'Sanitary accommodation' includes washing accommodation and water closets: *ibid* reg 1(2).

5 *Ibid* reg 4.

6 See *ibid* reg 5. If the crew accommodation is reconstructed or altered at a place outside the United Kingdom in consequence of an emergency or any accident to the vessel, such plans are to be submitted to a surveyor of ships as soon as practicable: reg 5(2) proviso.

7 See *ibid* regs 6, 7 (amended by SI 1998/929; SI 2002/2201).

8 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 8.

9 See *ibid* regs 9, 10, (10A), Schs 1, 2 (reg 10A added by SI 1998/929).

10 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 11 (amended by SI 1998/929).

11 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 12.

- 12 See *ibid* reg 13.
- 13 See *ibid* regs 14, 14A (added by SI 1998/929).
- 14 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 15, 15A (added by SI 1998/929; and amended by SI 2002/2201).
- 15 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 16, 16A (added by SI 1998/929; and amended by SI 2002/2201).
- 16 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 17.
- 17 See *ibid* reg 18.
- 18 See *ibid* reg 19, Sch 4.
- 19 See *ibid* regs 20-22.
- 20 See *ibid* regs 23, 24.
- 21 See *ibid* regs 25, 25A, 25B (regs 25A, 25B added by SI 1998/929; and amended by SI 2002/2201).
- 22 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 26.
- 23 See *ibid* regs 27, 27A (added by SI 1998/929).
- 24 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, reg 28.
- 25 See *ibid* regs 29, 29A (added by SI 1998/929; and amended by SI 2002/2201).
- 26 See the Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975, SI 1975/2220, regs 30, 31.
- 27 See *ibid* reg 32.
- 28 See *ibid* reg 33.
- 29 See *ibid* reg 34.
- 30 See *ibid* regs 35, 36 (added by SI 1998/929; and amended by SI 2002/2201).
- 31 The fine must not exceed level 5 on the standard scale: see the Merchant Shipping Act 1995 s 43(6). As to the standard scale see para 841 note 4 *ante*.
- 32 *Ibid* s 43(6).

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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#### **1024. Certificates of deck officers and engineer officers.**

Every United Kingdom ship<sup>1</sup> being a sea-going fishing vessel<sup>2</sup> or government fishery research vessel must carry at least the specified number of qualified officers<sup>3</sup>. An officer is qualified if he holds a certificate of competency or equivalent certificate<sup>4</sup>. It is an offence for a person to act in a capacity which requires a certificate of competency or equivalent unless he holds such a certificate, except temporarily in the event of the death or incapacity of an officer<sup>5</sup>. It is also an offence to appoint another person to act in a capacity for which he is not qualified<sup>6</sup> or to permit any person to be in charge of a navigational watch unless qualified<sup>7</sup>.

1        Is a ship registered in the United Kingdom under the Merchant Shipping Act 1995 Pt II (ss 8-23): see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 262 et seq.

2        'Fishing vessel' means a vessel for the time being employed in sea fishing but does not include a vessel used otherwise than for profit: Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 1(2).

3        See *ibid* regs 3, 4.

4        See *ibid* reg 5 (amended by SI 1995/1428). As to the certification of officers see the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, regs 6, 6A, 7, 7A (regs 6A, 7A added by SI 1995/1428; and the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 7 amended by SI 1998/1013). As to the standards and conditions for the issue of certificates see the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 8 (amended by SI 1995/1428; SI 1998/1013). As to the form, validity, record and surrender of certificates see the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 9 (amended by SI 1995/1428; SI 1998/1013). On the loss of a certificate, a copy may be issued on payment of a fee: see the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 10 (amended by SI 1995/1428).

5        See the Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 11(1) (amended by SI 1995/1428). This offence and the offences mentioned in the text to notes 6-7 *infra* are punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding two years and a fine: Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 12 (amended by virtue of the Criminal Justice Act 1988 s 51). As to the statutory maximum see para 849 note 15 *ante*.

6        Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984, SI 1984/1115, reg 11(3). See note 5 *supra*.

7        *Ibid* reg 11(2) (amended by SI 1995/1428). See note 5 *supra*.

#### **UPDATE**

#### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **1025. Fishing vessels' crew agreements and safety training.**

The statutory requirement<sup>1</sup> by which a written agreement must be made between each person employed as a seaman<sup>2</sup> in a United Kingdom ship<sup>3</sup> and his employers applies in the case of registered fishing vessels<sup>4</sup> (except those of less than 80 feet in length)<sup>5</sup>.

Where such a crew agreement relates to a fishing vessel, regulations<sup>6</sup> prescribe the place where the agreement is to be made<sup>7</sup> and provide for the delivery of the agreement and copies<sup>8</sup>, for the display of the agreement<sup>9</sup>, for the supply of a copy upon demand by a seaman<sup>10</sup> and for the production of the agreement and any certificate of exemption<sup>11</sup>.

Breach of the regulations is an offence<sup>12</sup>.

No person may be employed or engaged on or after 1 January 2005 on a fishing vessel registered in the United Kingdom unless he has undergone an approved training course on basic survival at sea, fire-fighting and prevention, first aid, and health and safety<sup>13</sup>.

<sup>1</sup>       Ie the requirement set out in the Merchant Shipping Act 1995 s 25: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 450.

<sup>2</sup>       'Seaman' includes every person (except masters and pilots) employed or engaged in any capacity on board any ship: *ibid* s 313(1). 'Master' includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper: s 313(1).

<sup>3</sup>       Ie a ship registered in the United Kingdom under *ibid* Pt II (ss 8-23): see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 262 *et seq*. For the meaning of 'United Kingdom' see para 843 note 1 *ante*.

<sup>4</sup>       As to registered fishing vessels see para 1021 *ante*; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.

<sup>5</sup>       Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 2(a). 'Length' means the length of a fishing vessel entered in its certificate of registry: reg 1(2). The requirements relating to crew agreements do not apply also to members of the naval, military or air forces of the Crown or of any service administered by the Defence Council when acting as such a member: reg 2(b); and see ARMED FORCES.

<sup>6</sup>       Ie the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919.

<sup>7</sup>       See *ibid* reg 3.

<sup>8</sup>       See *ibid* reg 5.

<sup>9</sup>       See *ibid* reg 6. Either a copy of the agreement or an extract containing prescribed particulars must be kept posted by the master and legible in some conspicuous place on board the fishing vessel: reg 6. The statutory requirement of carrying the crew agreement on board (see the Merchant Shipping Act 1995 s 25(4); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 450) may be satisfied where the agreement is kept at an address in the United Kingdom and it relates also to other fishing vessels, by carrying a certified copy: see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972/919, reg 4.

<sup>10</sup>       See *ibid* reg 7.

<sup>11</sup>       See *ibid* reg 8.

<sup>12</sup>       A person who fails to comply with an obligation imposed on him by or under *ibid* reg 5 (see the text to note 8 *supra*) or reg 7 (see the text to note 10 *supra*) commits an offence (reg 9(1)); as does an employer, or

any person on his behalf, who makes a crew agreement with a seaman in contravention of reg 3 (see the text to note 7 supra) (reg 9(2)). An offence is also committed if a master fails to comply with an obligation imposed on him by reg 6 (see the text to note 9 supra), reg 7 (see the text to note 10 supra) or reg 8 (see the text to note 11 supra) (reg 9(3)). Such an offence is punishable on summary conviction with a fine not exceeding £200: reg 9(4) (amended by SI 1979/1519). If a ship goes to sea or attempts to go to sea in contravention of the Merchant Shipping Act 1995 s 25, the master or the person employing the crew is liable on summary conviction to a fine not exceeding level 4 on the standard scale and the ship, if in the United Kingdom, may be detained: s 25(8). See SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1124. As to the standard scale see para 841 note 4 ante.

13 See the Fishing Vessels (Safety Training) Regulations 1989, SI 1989/126.

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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#### **1026. List of crew.**

The statutory requirement<sup>1</sup> by which the master<sup>2</sup> of every ship registered in the United Kingdom<sup>3</sup> must make and maintain a list of the crew applies in the case of fishing vessels<sup>4</sup> (except those of less than 40 feet in length)<sup>5</sup>.

Regulations<sup>6</sup> prescribe the particulars to be specified in the list<sup>7</sup>, principally the name of the fishing vessel, its port of registry and official number<sup>8</sup> and the name<sup>9</sup>, address<sup>10</sup>, date and place of birth<sup>11</sup> and nationality of every seaman on board<sup>12</sup>, and the capacity in which he is employed<sup>13</sup>. Within two days after the making of a list of crew relating to a fishing vessel of a length of 55 feet or more, or as soon as practicable thereafter, the master must deliver to a superintendent or proper officer a certified copy of the list of crew<sup>14</sup>. The owner must maintain at an address in the United Kingdom a copy of every list of crew, including all changes notified to him<sup>15</sup>, and the master must notify to the owner every change in the list within three days<sup>16</sup>.

A list remains in force until all persons employed under a crew agreement, if any, have been discharged<sup>17</sup> and, in any other case, until the fishing vessel first calls at its port of destination in the United Kingdom after six months from the date of the first entry in the list or until 30 days elapse after the end of that period, whichever first occurs<sup>18</sup>.

Contravention of the regulations is an offence<sup>19</sup>.

1 See the Merchant Shipping Act 1995 s 78; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 534 et seq.

2 For the meaning of 'master' see para 1025 note 2 ante.

3 As to registered fishing vessels see para 1021 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.



4 As to the application to fishing vessels of the provisions in the Merchant Shipping Act 1995 relating to ships see para 1021 ante.

5 Ibid s 78(4); Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 11. For the meaning of 'length' see para 1025 note 5 ante.

6 Ie the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as amended).

7 See ibid reg 13 (amended by SI 1983/478). A list of the crew may be contained in the same document as a crew agreement (see para 1025 ante) relating to one fishing vessel only: see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 12.

8 Ibid reg 13(1)(a)(i). As to other particulars relating to the fishing vessel see reg 13(1)(a)(ii), (iii).

9 Ibid reg 13(1)(b)(i).

10 Ibid reg 13(1)(b)(ii).

11 Ibid reg 13(1)(b)(iii).

12 Ibid reg 13(1)(b)(iiiA) (added by SI 1983/478). For the meaning of 'seaman' in the regulations as to lists of crew see the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 10.

13 Ibid reg 13(1)(b)(v). As to the other particulars prescribed in relation to seamen for the time being on board see reg 13(1)(b)(iv), (vi)-(x). As to exemptions see reg 13(2), (3) (reg 13(2) amended by SI 1983/478).

14 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 14. A person having in his possession a copy of a list of a crew relating to a fishing vessel of a length of less than 55 feet must deliver it on demand to a superintendent: reg 17. A master must on demand produce to a specified officer the list of crew required to be maintained in the fishing vessel: reg 20. Within two days after a list of crew relating to a fishing vessel of a length of 55 feet or more has ceased to be in force or, if it is not practicable within that period, as soon as practicable thereafter, the master must deliver the list to a superintendent or proper officer for the place where the fishing vessel is when the list ceases to be in force: reg 19.

15 Ibid reg 15(1). As to the owner see reg 15(3).

16 Ibid reg 15(2). When any person having in his possession the copy of a list has reason to believe that the fishing vessel to which it relates has been lost or abandoned, he must immediately deliver the copy of the list to a superintendent: see regs 16, 16A (added by SI 1977/45).

17 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 18(a). As to discharge see para 1028 post.

18 Ibid reg 18(b).

19 See ibid reg 21 (amended by SI 1977/45; SI 1979/1519). Such an offence is punishable on summary conviction with a fine not exceeding £50: Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 21(3) (amended by SI 1979/1519).

## UPDATE

### 1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **1027. Payment of wages; accounts.**

Except as provided by statute, the wages due to a seaman under a crew agreement relating to a fishing vessel must be paid to him in full<sup>1</sup>; and such wages must be paid in cash unless the seaman has agreed that the whole or part of them are to be paid by means of a cheque, money order or directly to a bank or giro account<sup>2</sup>.

The persons employing any seaman under a crew agreement relating to a fishing vessel must deliver to him at a prescribed time an account of the wages due to him under that agreement and of the deductions subject to which they are payable<sup>3</sup>. Where they are in any manner related to the catch the employers must at a prescribed time deliver to the master an account (or, if the master is the person employing him, make out an account) showing how those wages (or any part related to the catch) are arrived at, and must make the account available to the crew<sup>4</sup>.

On summary conviction the penalty for failing without reasonable cause to comply with these provisions is a fine<sup>5</sup>. Any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted by the parties to a superintendent or proper officer for decision<sup>6</sup>.

1 Merchant Shipping Act 1995 s 110. See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 479. As to registered fishing vessels see para 1021 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.

As to crew agreements see para 1025 ante. As to social security contributions for mariners see the Social Security Contributions and Benefits Act 1992 s 117 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 23. As to other permitted deductions see note 3 infra. As to the effect on a seaman's right to wages where a ship is wrecked, lost or sold see the Merchant Shipping Act 1995 s 38; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 464.

2 Merchant Shipping (Seamen's Wages and Accounts) (Fishing Vessels) Regulations 1972, SI 1972/1701, reg 2.

3 See ibid reg 3. These regulations permit deductions from wages due to a seaman under a crew agreement in respect of canteen bills, goods supplied, radio or telephone calls, postage expenses, cash advances and allotments: see regs 6, 7(a); and see also regs 7(b)-(f), 8-10 (reg 8 amended by SI 1988/2064; SI 1999/3360). As to partnerships between the master and any member of the crew see the Merchant Shipping (Seamen's Wages and Accounts) (Fishing Vessels) Regulations 1972, SI 1972/1701, reg 5.

4 See ibid reg 4, Schedule.

5 See the Merchant Shipping Act 1995 s 112(5), which provides that the fine is not to exceed level 2 on the standard scale. As to the standard scale see para 841 note 4 ante.

6 See ibid s 33(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 470.

### **UPDATE**

**1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **1028. Discharge of seamen.**

Regulations<sup>1</sup> provide that not less than 24 hours before a seaman<sup>2</sup> is to be discharged from the fishing vessel<sup>3</sup> in which he is employed outside the United Kingdom<sup>4</sup> (or, if it is not practicable within that period, as soon as practicable thereafter), his employer or the master<sup>5</sup> of the vessel must give a notice of discharge to a proper officer for the place where the seaman is to be discharged<sup>6</sup>. Except in certain cases<sup>7</sup> a seaman employed in a fishing vessel must not be discharged from the fishing vessel outside the United Kingdom without the consent of a proper officer<sup>8</sup>. Where the officer gives such consent he must, if practicable, make and sign an entry in the fishing vessel's official log book<sup>9</sup> recording his consent; but if he does not do so the master must make and sign an entry recording that the consent has been given<sup>10</sup>.

Where a seaman is present when he is discharged, his employer must ensure that the seaman is discharged in the presence of the employer himself or the master or a person authorised by the employer or master<sup>11</sup>. The relevant person<sup>12</sup> must make and sign certain entries<sup>13</sup> which the seaman must sign<sup>14</sup>. If the seaman is not present when he is discharged, the master, or a person authorised by the master, must make the entries<sup>15</sup>. If a seaman employed in a fishing vessel of more than 55 feet in length so requests, his employer or the master must give to him, either on discharge or at the time his wages are paid to him, a certificate of discharge containing the prescribed particulars<sup>16</sup>. Contravention of the regulations is an offence<sup>17</sup> punishable by a fine<sup>18</sup>.

1        In the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919 (as amended): see para 1025 ante.

2        For the meaning of 'seaman' see para 1025 note 2 ante.

3        As to registered fishing vessels see para 1021 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.

4        For the meaning of 'United Kingdom' see para 843 note 1 ante.

5        For the meaning of 'master' see para 1025 note 2 ante.

6        Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 22(1). A notice of discharge must contain the name of the fishing vessel, its port of registry and official number, the name of the seaman to be discharged, the place, date and time of the seaman's discharge, the capacity in which he is employed, whether or not the consent of a proper officer is required and, if not, the reason it is not required: reg 22(2).

7        See *ibid* reg 23(1)(a)-(d).

8        *Ibid* reg 23(1).

9        As to official log books see para 1030 post.

10 Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972, SI 1972/919, reg 23(2).

11 Ibid reg 24(1)(a).

12 Ie the person mentioned in ibid reg 24(1)(a), in whose presence the seaman is discharged: reg 24(1)(b).

13 He must: (1) make and sign an entry in the official log book (see para 1030 post) recording the place and date of the seaman's discharge; and (2) make and sign an entry in the crew agreement (see para 1025 ante) or, if there is a list of crew (see para 1026 ante) separate from a crew agreement, in the list of crew, recording the date and place of, and the reason for, the seaman's discharge: ibid reg 24(1)(b).

14 Ibid reg 24(1)(c).

15 Ibid reg 24(2).

16 Ibid reg 24(3). The particulars are: the name of the fishing vessel, its port of registry, official number and its length, the type and horse-power of its main engine, the name of the seaman, the capacity in which he was employed in the fishing vessel, the date of the beginning of employment and the date of discharge: reg 24(3)(a), (b).

17 See ibid reg 25(1)-(5).

18 In the case of an offence under ibid reg 25(1)(a), (b), (c), (3), (4), the punishment is a fine not exceeding £200; in the case of an offence under reg 25(1)(d), (e), (2), the punishment is a fine not exceeding £50; and in the case of an offence under reg 25(5), the punishment is a fine not exceeding £10: reg 25(6) (amended by SI 1979/1519).

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **1029. Discipline.**

The statutory provisions relating to a seaman's disobedience to lawful commands which are required to be obeyed at a time while a ship is at sea and his neglect of any duty which is required to be discharged at such a time<sup>1</sup> do not apply to fishing vessels<sup>2</sup> and persons serving in them<sup>3</sup>. Regulations may provide for the hearing on shore in the United Kingdom<sup>4</sup>, by a disciplinary body, of a complaint by the master or owner of a fishing vessel against a seaman alleging that during his employment in the vessel the seaman contravened a local industrial agreement relating to his employment on the vessel and for requiring the disciplinary body to have regard to the agreement in determining whether the allegation is proved; the alleged contravention may be one on or off the ship and in the United Kingdom or elsewhere<sup>5</sup>. Such

regulations may include provision authorising persons to determine what agreements are or were local industrial agreements and which local industrial agreement relates or related to a person's employment in a particular vessel<sup>6</sup>.

- 1      In the Merchant Shipping Act 1995 s 59(1)(a), (b): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1160.
- 2      As to registered fishing vessels see para 1021 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.
- 3      See the Merchant Shipping Act 1995 s 119(1). See also SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1160.
- 4      For the meaning of 'United Kingdom' see para 843 note 1 ante.
- 5      Merchant Shipping Act 1995 s 119(2). At the date at which this volume states the law no such regulations had been made. The provisions of s 119(2), (3) (see the text to note 6 infra) do not have effect until the Secretary of State by order appoints a day for s 119(2), (3) to come into force: s 314(3), Sch 14 para 5(1), (2). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 846 ante.
- 6      Ibid s 119(3). See note 5 supra.

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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### **1030. Official log books.**

The statutory requirement<sup>1</sup> by which an official log book must be kept in every ship registered in the United Kingdom<sup>2</sup> applies in the case of registered fishing vessels<sup>3</sup> (except those of a length less than 55 feet)<sup>4</sup>.

In respect of those fishing vessels which are not exempted from this requirement, regulations<sup>5</sup> prescribe the entries which are to be made in the official log book<sup>6</sup>, the making, signing and witnessing of those entries<sup>7</sup>, the time for making them<sup>8</sup> and their amendment and cancellation<sup>9</sup>.

The master of the fishing vessel must on demand produce the official log book to the prescribed officials<sup>10</sup>. The master must, if practicable, deliver the official log book to the appropriate officer within 48 hours after the discharge of the last person employed in the fishing vessel under a crew agreement<sup>11</sup>.

Breach of the regulations is an offence<sup>12</sup>.

1 le the requirement of the Merchant Shipping Act 1995 s 77: see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 531.

2 For the meaning of 'United Kingdom' see para 843 note 1 ante. As to the registration of ships generally see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq.

3 As to registered fishing vessels see para 1021 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 256.

4 Merchant Shipping (Official Log Books) (Fishing Vessels) Regulations 1981, SI 1981/570, regs 2, 3.

5 le the Merchant Shipping (Official Log Books) (Fishing Vessels) Regulations 1981, SI 1981/570 (as amended).

6 See *ibid* regs 3, 6, Schedule (amended by SI 1983/1801; SI 1997/1511; SI 2002/1473). The prescribed entries relate to such matters as details of the vessel, its owner and master, records of casualties, discharges, births, deaths, complaints, breaches of discipline, inquiries, masters, examinations and inspections.

7 See the Merchant Shipping (Official Log Books) (Fishing Vessels) Regulations 1981, SI 1981/570, reg 4.

8 See *ibid* reg 7.

9 See *ibid* reg 8.

10 See *ibid* reg 9.

11 See *ibid* reg 10(1), (2)(a). Delivery of the official log book to the appropriate officer is also required, if practicable, within 48 hours after the time when the fishing vessel first calls at a port more than six months after the first material entry in the log book: see reg 10(1), (2)(b). As to an alternative time limit where there is a pending wage submission see reg 10(3).

12 *Ibid* reg 11. Such an offence is punishable on summary conviction with a fine not exceeding £50: see reg 11.

## UPDATE

### **1015-1030 Offences against the Sea Fish (Conservation) Act 1967 ... Official log books**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A. Regulatory Enforcement and Sanctions Act 2008 Schs 5, 6 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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## **(vii) Shellfish**

### **A. RIGHTS OF FISHING AND REGULATION OF FISHERIES**

#### **1031. Establishment of oyster, mussel and cockle fisheries before 1868.**

The common law right of members of the public to fish within British fishery limits<sup>1</sup> and in tidal rivers is still exercised in respect of oysters, mussels and cockles in certain areas where the rights of fishery have not been vested in individuals or corporation<sup>2</sup>. A number of several fisheries<sup>3</sup> were created by royal grant prior to Magna Carta and subsequently by Acts of Parliament usually of a private or local character<sup>4</sup>.

- 1 As to British fishery limits see para 961 ante.
- 2 As to public fisheries see para 797 et seq ante.
- 3 As to several fisheries see para 805 ante.
- 4 See para 803 ante.

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### **1032. Power to make orders as to several fisheries for shellfish.**

On an application made in the prescribed manner<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> may by order<sup>3</sup> provide for the establishment or improvement, and for the maintenance and regulation<sup>4</sup>, of a fishery<sup>5</sup> for any one or more of the following descriptions of shellfish<sup>6</sup>: oysters, mussels, cockles, clams, lobsters and any other molluscs or crustaceans of a kind specified in regulations<sup>7</sup> made by the Secretary of State or the Welsh Ministers<sup>8</sup>. Such a fishery may be on any portion of the sea shore<sup>9</sup> and the order may provide, if desirable, for the constitution of a board or body corporate for the purposes of the order<sup>10</sup>.

Such an order may confer on such persons as may be specified in it: (1) a right of several fishery with respect to the whole of the area of the fishery to which the order relates<sup>11</sup>; (2) a right of regulating a fishery with respect to the whole of that area<sup>12</sup>; or (3) a right of several fishery with respect to such part of that area as may be specified by or under the order and a right of regulating a fishery with respect to the remainder<sup>13</sup>. The order may not, however, confer any of these rights for a longer period at one time than 60 years<sup>14</sup>.

No such order may take away or abridge any right of several fishery or any right on, to or over any portion of the sea shore, being a right enjoyed by any person under any local or special Act of Parliament or any royal charter, letters patent, prescription or immemorial usage, except with that person's consent<sup>15</sup>.

Where the Secretary of State makes or the Welsh Ministers make such an order, the applicants for the order must cause notice of the making of the order to be published in such manner as the Secretary of State thinks or the Welsh Ministers think sufficient for giving information to all parties interested, and must give notice of the making of the order, in such manner as the Secretary of State or the Welsh Ministers may direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers, if any, of the portion of the sea shore to which the order relates and of the adjoining land<sup>16</sup>.

1 In accordance with the Sea Fisheries (Shellfish) Act 1967 s 1(2), Sch 1 (s 1(2) amended by the Sea Fisheries (Shellfish) (Amendment) Act 1997 s 1; and the Sea Fisheries (Shellfish) Act 1967 Sch 1 amended by the Sea Fisheries Act 1968 s 15(1), (7); and by virtue of the Criminal Justice Act 1982 ss 38, 46). An application must be made in the form prescribed by the Several and Regulated Fisheries (Form of Application) Regulations 1987, SI 1987/217.

2 As to the Secretary of State and the Welsh Ministers see para 846 ante.

3 As to the making of orders under the Sea Fisheries (Shellfish) Act 1967 see ss 1(6), 20 (as amended); and para 959 ante. As to grants and loans for the restoration of fisheries which are subject to an order see para 1052 post. As to restrictions on the content of those orders see the text and note 15 infra. As to the procedure to be followed on an application for an order and provisions for an inquiry and confirmation see para 1049 post. Orders made or having effect under s 1 (as amended), being of local application, are not covered in this work, but see eg the Calshot Oyster Fishery Order 2005, SI 2005/1400; and the Stanswood Bay Oyster Fishery Order 2005, SI 2005/1402.

4 This power to make an order conferring on the grantees a right of regulating a fishery for any specified description of shellfish is to be construed as including a power to enable them, with the consent of the Secretary of State or the Welsh Ministers, to impose restrictions on and make regulations respecting the dredging, fishing for and taking of shellfish of that description within the limits of the regulated fishery: Sea Fisheries Act 1968 s 15(3). Where such an order imposes tolls or royalties upon persons dredging, fishing for and taking any specified description of shellfish within the limits of a fishery it is to be construed as conferring on the grantees of the fishery power, with the consent of the Secretary of State or the Welsh Ministers, to vary those tolls or royalties: s 15(4).

5 As to the nature of fisheries see para 789 ante.

6 In the Sea Fisheries (Shellfish) Act 1967, 'shellfish', except in so far as the context otherwise requires, includes crustaceans and molluscs of any kind, and includes any part of a shellfish and any (or part of any) brood, ware, half-ware or spat of shellfish, and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish; and references in the Act to shellfish of any particular description are to be construed accordingly: s 22(2). Shellfish are included in the definition of 'fish' for the purposes of the Sea Fisheries Act 1968 and in the definition of 'sea fish' in the Sea Fisheries Regulation Act 1966 and the Sea Fish (Conservation) Act 1967: see paras 969 note 3, 975 note 4 ante. Shellfish are therefore capable of being the subject matter of byelaws of local fisheries committees, and of being subject to the provisions regulating the landing of foreign-caught fish, provisions laying down size limits for fish, provisions restricting fishing and prohibitions of landing sea fish caught in specified waters: see paras 969, 975, 988-989, 992 ante. As to sea fisheries generally see para 956 et seq ante. As to byelaws see paras 974-975 ante.

7 Such regulations must be made by statutory instrument: Sea Fisheries (Shellfish) Act 1967 s 20(1). See the Shellfish (Specification of Molluscs) Regulations 1987, SI 1987/218, specifying scallops and queens; the Shellfish (Specification of Crustaceans) Regulations 2001, SI 2001/1381, specifying crabs in relation to England; and the Shellfish (Specification of Crustaceans) (Wales) Regulations 2002, SI 2002/1885, specifying crabs in relation to Wales.

8 Sea Fisheries (Shellfish) Act 1967 s 1(1) (amended by the Sea Fisheries Act 1968 s 15(1), (2); and the Sea Fisheries (Shellfish) (Amendment) Act 1997 s 1).

9 'The sea shore' means any portion of the shore and bed of the sea, or of an estuary or tidal river, above or below, or partly above and partly below, low-water mark and within waters adjacent to England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured: Sea Fisheries (Shellfish) Act 1967 s 1(1) (amended by the Sea Fisheries (Shellfish) (Amendment) Act 1997 s 1; the Fisheries Limits Act 1976 s 9(1), Sch 2 para 15; and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 42). As to the territorial sea see WATER AND WATERWAYS vol 100 (2009) PARA 31. As to the situation of a fishery for the purposes of jurisdiction see para 1051 text and notes 1-3 post. As to British fishery limits see para 961 ante.

10 Sea Fisheries (Shellfish) Act 1967 s 1.

11 Ibid s 1(3)(a).

12 Ibid s 1(3)(b).

13 Ibid s 1(3)(c).

14 Ibid s 1(3).

15 Ibid s 1(5). An order under s 1 may not be made with respect to any portion of the sea shore which belongs to Her Majesty in right of the Crown or forms part of the Duchy of Lancaster or of the Duchy of Cornwall except with the appropriate consent, ie: (1) the consent of the Crown Estate Commissioners; (2) the consent of the Chancellor of the Duchy of Lancaster in writing under his hand attested by the clerk of the council of the duchy; or (3) the consent of the Duke of Cornwall or the other persons for the time being empowered to dispose for any purpose of lands of the Duchy of Cornwall, as the case may be: s 1(4). 'Land' includes land covered by



water: s 22(2). As to the portion of the sea shore which belongs to Her Majesty see CROWN PROPERTY vol 12(1) (Reissue) para 242 et seq.

16 Ibid Sch 1 para 7. As to the procedure before the making of the order see para 1049 post.

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1032 Power to make orders as to several fisheries for shellfish**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Regulatory Enforcement and Sanctions Act 2008 Sch 3 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

NOTES 1, 8, 9--Sea Fisheries (Shellfish) (Amendment) Act 1997 s 1 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

NOTE 1--Sea Fisheries (Shellfish) Act 1967 Sch 1 further amended: Marine and Coastal Access Act 2009 ss 202(4), 214, Sch 22 Pt 5.

NOTE 3--Sea Fisheries (Shellfish) Act 1967 s 1(6) substituted, s 1(7)-(14) added: Marine and Coastal Access Act 2009 s 203.

NOTE 4--Sea Fisheries Act 1968 s 15(3) amended: Marine and Coastal Access Act 2009 s 202(5)(b).

NOTE 6--Sea Fisheries Regulation Act 1966 repealed: Marine and Coastal Access Act 2009 s 187, Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTE 8--Sea Fisheries (Shellfish) Act 1967 s 1(1) further amended and Sea Fisheries Act 1968 s 15(2) repealed: Marine and Coastal Access Act 2009 s 202(2), Sch 22 Pt 5.

NOTE 15--Sea Fisheries (Shellfish) Act 1967 s 1(4) repealed: Marine and Coastal Access Act 2009 s 202(3), Sch 22 Pt 5.

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### **1033. Effect of a several fishery order.**

Where a right of several fishery<sup>1</sup> has been conferred by order<sup>2</sup>, then subject to any restrictions and exceptions contained in the order and to the statutory prohibitions on the deposit of shellfish<sup>3</sup>, the grantees<sup>4</sup> have, within the limits of the fishery or of that part of the fishery within

which the right is exercisable, the exclusive right of depositing, propagating, dredging, fishing for and taking shellfish of any description to which the order applies<sup>5</sup>. In the exercise of that right they may within those limits: (1) make and maintain beds for such shellfish<sup>6</sup>; (2) at any season collect such shellfish and remove them from place to place and deposit them as and where the grantees think fit<sup>7</sup>; (3) do all other things which the grantees think proper for obtaining, storing and disposing of the produce of their fishery<sup>8</sup>.

1 As to several fisheries see para 805 ante.

2 Ie by order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante.

3 Ie the prohibitions provided for by ibid s 12 (as amended): see para 1041 post. For the meaning of 'shellfish' see para 1032 note 6 ante.

4 'The grantees' means the persons for the time being entitled to the right of several fishery conferred by order under ibid s 1 (as amended): s 2(2).

5 Ibid s 2(1).

6 Ibid s 2(1)(a). 'Shellfish bed' means any bed or ground in which shellfish are usually found or which is used for the propagation or cultivation of shellfish: s 22(1). In ss 2, 7, 9, 12 (ss 7, 9, 12 as amended), references to a bed for shellfish, a shellfish bed or an oyster bed include references to any structure floating on or standing or suspended in water for the propagation or cultivation of shellfish or oysters; and: (1) the area of a fishery to which an order under s 1 (as amended) (see para 1032 ante) relates may, within the limits specified in s 1(1) (as amended), include any waters which contain or are to contain any such structure; (2) the reference in s 5 (as amended) (see para 1036 post) to cultivating the ground for shellfish includes a reference to cultivating shellfish by means of any such structure: Fisheries Act 1981 s 34.

7 Sea Fisheries (Shellfish) Act 1967 s 2(1)(b).

8 Ibid s 2(1)(c).

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (vii) Shellfish/A. RIGHTS OF FISHING AND REGULATION OF FISHERIES/1034. Effect of regulating order.

### **1034. Effect of regulating order.**

Where an order<sup>1</sup> confers on the grantees a right of regulating a fishery for any specified description of shellfish<sup>2</sup> and imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of any specified description of shellfish within the limits of the regulated fishery, or of that part of the fishery within which the right is exercisable, or where the order imposes tolls or royalties upon persons dredging, fishing for and taking any specified description of shellfish within the limits of that fishery or part, then, subject to any restrictions and exceptions contained in the order and to the statutory prohibitions<sup>3</sup> on the deposit of

shellfish, the grantees may do all or any of the following things<sup>4</sup>. They may: (1) carry into effect and enforce any such restrictions and regulations<sup>5</sup>; (2) levy any such tolls or royalties<sup>6</sup>; (3) provide for depositing and propagating shellfish of any description to which the order applies within those limits and for improving and cultivating the regulated fishery or regulated part, as the case may be<sup>7</sup>.

Any person who dredges, fishes for or takes shellfish of any description to which any such order applies in contravention of any such restriction or regulation, or without paying any such toll or royalty, is guilty of an offence<sup>8</sup>. He is also liable to forfeit all such shellfish so taken or, if they have been sold, a sum equal to their value<sup>9</sup>.

1       Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante.

2       As to the meaning of 'shellfish' see para 1032 note 6 ante.

3       Ie the prohibitions provided for by the Sea Fisheries (Shellfish) Act 1967 s 12 (as amended): see para 1041 post.

4       Ibid s 3(1).

5       Ibid s 3(1)(a). Subject to s 4 (see para 1035 post), all such restrictions and regulations are to be imposed on and apply to all persons equally and are to be for the benefit of the regulated fishery or part only: s 3(2).

6       Ibid s 3(1)(b). Subject to s 4 (see para 1035 post), all such tolls and royalties are to be imposed on and apply to all persons equally, and are to be for the benefit of the regulated fishery or part only, and are to be applied in the improvement and cultivation of that fishery or part: s 3(2).

7       Ibid s 3(1)(c).

8       Ibid s 3(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 3(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the standard scale see para 841 note 4 ante. As to the service of documents under this provision see para 1051 post.

9       Sea Fisheries (Shellfish) Act 1967 s 3(3). Any shellfish or sum so forfeited are recoverable in like manner as a fine: s 3(3). The court by which any such forfeiture is imposed may direct the shellfish or sum forfeited to be delivered or paid to the grantees to be applied by them for the improvement and cultivation of the regulated fishery or part: s 3(4).

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1034 Effect of regulating order**

TEXT AND NOTES--Sea Fisheries (Shellfish) Act 1967 s 3(1)(c), (2), (4) amended, s 3(3) further amended, s 3(2A), (5)-(7) added: Marine and Coastal Access Act 2009 ss 204, 205(2), 206(1), 207.

NOTE 8--Entry relating to Sea Fisheries (Shellfish) Act 1967 s 3(3) in Criminal Justice and Public Order Act 1994 Sch 8 Pt 1 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

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### **1035. Licensing powers in case of regulated fishery.**

Where an order<sup>1</sup> confers a right of regulating a fishery, the restrictions imposed<sup>2</sup> by the order may include restrictions prohibiting all persons from dredging, fishing for or taking, within the limits of the fishery or of that part of the fishery within which the right is exercisable, shellfish<sup>3</sup> of the description to which the order applies, except under a licence issued by the grantees<sup>4</sup>. Any power to vary such an order<sup>5</sup> includes power to vary the order so as to impose such restrictions<sup>6</sup>.

Where an order<sup>7</sup> imposes any such restrictions, licences may be issued for such periods, in such numbers and to such persons, and may authorise the dredging, fishing for or taking of shellfish, at such times, in such manner and to such extent, as the grantees determine<sup>8</sup>. Any licence issued under such an order may be cancelled by the grantees with the consent of the Secretary of State or the Welsh Ministers, if the licensee, having been convicted of an offence of contravening a restriction imposed by the order, is subsequently convicted of another such offence<sup>9</sup>.

1       Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante. As to the effect of a regulating order see para 1034 ante.

2       In *ibid* s 4, any reference to the imposition of restrictions includes a reference to the making of regulations: s 4(8).

3       As to the meaning of 'shellfish' see para 1032 note 6 ante.

4       Sea Fisheries (Shellfish) Act 1967 s 4(1), (2).

5       Ie an order under *ibid* s 1 (as amended), conferring a right of regulating a fishery: see para 1032 ante.

6       *Ibid* s 4(3). The power to impose restrictions is expressed to be without prejudice to the generality of the power to vary the order: s 4(3).

7       Ie an order under *ibid* s 1 (as amended) (see para 1032 ante), conferring a right of regulating a fishery (either as originally made or as varied): s 4(4).

8       *Ibid* s 4(4). The power to issue licences is subject to the provisions of the order and of s 4: s 4(4). Where the grantees propose to issue licences under the order, then, unless they propose to issue licences to all applicants, they must notify the Secretary of State or the Welsh Ministers of their intention, and he or they may give them directions as to the exercise of the powers under s 4(4): s 4(5). As to the Secretary of State and the Welsh Ministers see para 846 ante. If the grantees issue or withhold licences without complying with s 4(5) or of any directions given under it, then, for the purposes of s 5 (as amended) (and without prejudice to the generality of s 5 (as amended)), the grantees are to be taken not to be properly carrying into effect the restrictions imposed by the order: s 4(6). However, no licence is invalid by reason only that it was issued in contravention of any such requirements: s 4(6).

9       *Ibid* s 4(7). Except as provided in s 4(7) a licence so issued must not be cancelled before it is due to expire unless the licensee dies or surrenders the licence: s 4(7).

## **UPDATE**

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleaving of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1035 Licensing powers in case of regulated fishery**

TEXT AND NOTES--See also Sea Fisheries (Shellfish) Act 1967 s 4ZA (added by Marine and Coastal Access Act 2009 s 209) (register of licences).

TEXT AND NOTE 9--Sea Fisheries (Shellfish) Act 1967 s 4(7) amended: Marine and Coastal Access Act 2009 s 208, Sch 22 Pt 5.

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### **1036. Cesser of rights as to fisheries for shellfish.**

If, in the case of any right of several fishery or of regulating a fishery conferred by an order<sup>1</sup>, the Secretary of State is or the Welsh Ministers<sup>2</sup> are not satisfied, as respects the whole or any part of the area within which the right is exercisable, that the grantees<sup>3</sup> are properly cultivating the ground for shellfish<sup>4</sup> of any prescribed description<sup>5</sup> within the limits of that area or part, or that they are properly carrying into effect and enforcing any restrictions<sup>6</sup> and regulations contained in the order and levying any tolls or royalties imposed by it, he or they may make a certificate to that effect<sup>7</sup>. Thereupon the right is absolutely determined as respects that area or part of an area, and the area or part of an area ceases to be part of a several or regulated fishery<sup>8</sup>.

With respect to any such fishery, the Secretary of State or the Welsh Ministers may from time to time make such inquiries and examination by an inspector or otherwise, and require from the grantees such information, as he thinks or they think necessary or proper<sup>9</sup>. The grantees must afford all facilities for such inquiries and examination and give such information<sup>10</sup>.

1      Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante.

2      As to the Secretary of State and the Welsh Ministers see para 846 ante.

3      In the Sea Fisheries (Shellfish) Act 1967 s 5 (as amended), 'the grantees', in relation to a several fishery, means the persons for the time being entitled to that right: s 5(8). As to the effect of a several fishery order see para 1033 ante. As to several fisheries see para 805 ante.

4      As to the meaning of 'shellfish' see para 1032 note 6 ante. As to the reference to a shellfish ground see the Fisheries Act 1981 s 34(b); and para 1033 note 6 ante.

5      Ie shellfish of any description to which the order applies: Sea Fisheries (Shellfish) Act 1967 s 5(1).

6      As to the circumstances in which grantees are deemed not to be carrying restrictions into effect see *ibid* s 4(6); and para 1035 note 8 ante.

7      *Ibid* s 5(1).

8      *Ibid* s 5(1). The provisions of the Sea Fisheries (Shellfish) Act 1967 thereupon cease to operate in relation to that area or part of an area as a several or regulated fishery or as part of such a fishery: s 5(1). As to the effect of a regulating order see para 1034 ante.

9 Ibid s 5(2). These powers are exercisable for the purpose of s 5(1) (see the text and notes 1-8 supra): s 5(2).

10 Ibid s 5(2). As to the powers of inspectors in relation to this provision see para 1050 post.

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1037. Protection of shellfish fisheries.**

Where an order<sup>1</sup> grants a right of several fishery<sup>2</sup>, all the prescribed shellfish<sup>3</sup> in or on a bed for such shellfish within the area of the fishery<sup>4</sup> are the absolute property of the grantees<sup>5</sup> and are deemed to be in the actual possession of the grantees in all courts and for all purposes<sup>6</sup>. Similarly all oysters<sup>7</sup> in certain private oyster beds<sup>8</sup> are the absolute property of the owner of the bed and are deemed to be in the actual possession of the owner in all courts and for all purposes<sup>9</sup>. All shellfish removed by any person from a bed for such shellfish within the area of the fishery<sup>10</sup> or all oysters removed by any person from the private oyster bed<sup>11</sup>, unless disposed of by or under the authority of the grantees or, in the case of oysters, of the owner of the bed, are the absolute property of the grantees, or the owner of the bed, and in all courts and for all purposes the absolute right to possession of them is deemed to be in the grantees, or the owner of the bed, as the case may be<sup>12</sup>.

1 Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante.

2 As to several fisheries see para 805 ante.

3 Ie all shellfish of a description to which the order applies: see the Sea Fisheries (Shellfish) Act 1967 s 7(2). For the meaning of 'shellfish' see para 1032 note 6 ante.

4 Ie within the area of the fishery with respect to which the right of several fishery is conferred: ibid s 7(2). As to references to beds for shellfish and oysters see para 1033 note 6 ante.

5 In ibid s 7 (as amended), 'the grantees' are the persons for the time being entitled to the right of several fishery conferred by the order under s 1 (as amended) (see para 1032 ante): s 7(6). As to the ownership of living fish generally see para 839 ante.

6 Ibid s 7(1)(a), (2).

7 As to the construction of references to specified descriptions of shellfish see para 1032 note 6 ante.

8 Ie in a private oyster bed owned by any person (independently of the Sea Fisheries (Shellfish) Act 1967) which is sufficiently marked out or sufficiently known as such: s 7(1)(b).

9 Ibid s 7(1)(b), (2). A person who deposits oysters on a portion of the foreshore in a public fishery does not ipso facto retain a property in them: *Truro Corpn v Rowe* [1902] 2 KB 709, CA. However, the courts will readily presume a legal origin for the existence and user of long-established oyster ponds or 'layings' (artificial saltwater ponds used for the storage and fattening of oysters). A legal occupier of such a pond is entitled to maintain an action for trespass against wrongdoers irrespective of the ownership of the soil: *Foster v Warblington UDC* [1906] 1 KB 648, CA.

10 See note 4 supra.

11 See note 8 supra.

12 Sea Fisheries (Shellfish) Act 1967 s 7(3) (amended by the Sale of Goods (Amendment) Act 1994 s 2(2)).

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1037 Protection of shellfish fisheries**

TEXT AND NOTES--Sea Fisheries (Shellfish) Act 1967 s 7 further amended: Marine and Coastal Access Act 2009 s 210.

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## **B. PROTECTION OF FISHERIES; PROHIBITIONS**

### **1038. Offences in connection with shellfish fisheries and oyster beds.**

If, within the limits of the area of the fishery<sup>1</sup> or within the limits of the private oyster bed<sup>2</sup>, any person other than the grantees<sup>3</sup> or an agent or employee of theirs or, as the case may be, the owner or an agent or employee of his knowingly<sup>4</sup> does any of certain acts he is guilty of an offence<sup>5</sup>, and is liable on summary conviction to a fine<sup>6</sup>; and in addition he is liable to make full compensation to the grantees or owner for all damage sustained by them or him by reason of his unlawful act<sup>7</sup>.

The acts concerned are:

- (1) using any implement of fishing except a line and hook<sup>8</sup> or a net adapted solely for catching floating fish, and so used as not to disturb or injure shellfish of the description in question or any bed therefor or the fishery therefor<sup>9</sup>;
- (2) dredging for ballast or other substance, except under lawful authority for improving the navigation<sup>10</sup>;
- (3) depositing any ballast, rubbish, or other substance<sup>11</sup>;

- (4) placing any implement, apparatus or thing prejudicial or likely to be prejudicial to any such shellfish, bed or fishery, except for the lawful purpose of navigation or of anchorage<sup>12</sup>; or
- (5) disturbing or injuring in any manner, except for a lawful purpose of navigation or anchorage, any such shellfish, bed or fishery<sup>13</sup>.

1       le within the limits of the areas of the fishery with respect to which the right of several fishery is conferred or in any part of that area, described for the purposes of the Sea Fisheries (Shellfish) Act 1967 s 7(4) (as amended), in the order which confers the right of several fishery: s 7(4). As to such orders see para 1032 ante.

2       As to the relevant oyster beds see para 1037 note 8 ante. As to references to beds for shellfish and oysters see para 1033 note 6 ante.

3       For the meaning of 'the grantees' see para 1037 note 5 ante.

4       'Knowingly' means not accidentally; there is no right to trawl over such beds, and it is no defence to say it was done in good faith in the exercise of the public right of fishery: *Smith v Cooke* (1914) 84 LJKB 959, DC.

5       Sea Fisheries (Shellfish) Act 1967 s 7(4). Nothing in s 7(4) (as amended) makes it unlawful for any person to do any of the things mentioned in it: (1) in the case of a right of several fishery granted by an order under s 1 (as amended) (see para 1032 ante) if at the time of his doing that thing the limits of the area of the fishery within which that right is exercisable or of that part of that area described for the purposes of s 7(4) (as amended) in the order are not sufficiently marked out in the manner prescribed by or under the order or if notice of those limits has not been given in the prescribed manner; (2) in the case of a private oyster bed owned by any person independently of the Sea Fisheries (Shellfish) Act 1967, if the bed is not sufficiently marked out and known as such: s 7(5).

6       The fine must not exceed level 5 on the standard scale: *ibid* s 7(4) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the standard scale see para 841 note 4 ante.

7       Sea Fisheries (Shellfish) Act 1967 s 7(4). Such compensation in default of payment may be recovered from him by the grantees or owner, as the case may be, by proceedings in any court of competent jurisdiction, whether he has been prosecuted for or convicted of the offence in question or not: s 7(4). As to the service of documents under s 7(4) (as amended) see para 1051 post.

8       *Ibid* s 7(4)(a)(i).

9       *Ibid* s 7(4)(a)(ii).

10       *Ibid* s 7(4)(b).

11       *Ibid* s 7(4)(c).

12       *Ibid* s 7(4)(d).

13       *Ibid* s 7(4)(e).

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1038 Offences in connection with shellfish fisheries and oyster beds**



TEXT AND NOTES--Sea Fisheries (Shellfish) Act 1967 s 7(4) further amended, s 7(4A) added: Marine and Coastal Access Act 2009 ss 205(3), 211.

NOTE 6--Entry relating to Sea Fisheries (Shellfish) Act 1967 s 7(4) in Criminal Justice and Public Order Act 1994 Sch 8 Pt 1 repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

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### **1039. Elimination of pest or disease affecting shellfish.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may take any action which appears to him or them to be requisite: (1) for destroying any shellfish<sup>2</sup> which are in specified waters<sup>3</sup> and which appear to him or them to be affected by a disease or pest<sup>4</sup>; or (2) for eliminating from any such waters any disease or pest affecting shellfish<sup>5</sup>. Where the Secretary of State has or the Welsh Ministers have taken such action<sup>6</sup>, he or they may take any requisite action for causing those waters to be restocked with shellfish<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 For the meaning of 'shellfish' see para 1032 note 6 ante.

3 Ie any waters in which the public have a right to fish, other than: (1) waters which are within the limits of a fishery in respect of which a right (whether a right of several fishery or of regulating a fishery) conferred by an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended) (see para 1032 ante) is for the time being in force; (2) waters (not falling within head (1) supra) in which a person has an exclusive right to take shellfish of any description: s 15(1).

4 Ibid s 15(2)(a).

5 Ibid s 15(2)(b).

6 Ie any action in accordance with ibid s 15(2)(a) or (b) (see heads (1), (2) in the text). As to grants and loans see para 1052 post.

7 Ibid s 15(2).

### **UPDATE**

#### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (vii) Shellfish/B. PROTECTION OF FISHERIES; PROHIBITIONS/1040. Size limits for crabs and lobsters.

#### **1040. Size limits for crabs and lobsters.**

It is illegal for any person in England and Wales to land, sell, expose or offer for sale, or have in his possession for the purpose of sale, crabs, edible crabs, velvet crabs, spider crabs, lobsters or scallops under a specified size<sup>1</sup>.

<sup>1</sup> See the Sea Fish (Conservation) Act 1967 s 1(1); and para 988 ante. As to the sizes specified see the following orders: the Undersized Crabs Order 1986, SI 1986/497 (amended by SI 1989/2443; revoked in relation to England); the Undersized Velvet Crabs Order 1989, SI 1989/919; the Undersized Lobsters Order 1993, SI 1993/1178 (revoked in relation to England); the Undersized Spider Crabs Order 2000, SI 2000/1502; the Undersized Lobsters Order 2000, SI 2000/1503; the Undersized Edible Crabs Order 2000, SI 2000/2029; the Undersized Spider Crabs (Wales) Order 2002, SI 2002/1897; the Scallop Fishing Order 2004, SI 2004/12; and the Scallop Fishing (Wales) Order 2005, SI 2005/1717.

#### **UPDATE**

#### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **1040 Size limits for crabs and lobsters**

NOTE 1--SI 2005/1717 revoked: SI 2009/2721.

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#### **1041. Restrictions on and orders controlling the deposit and taking of shellfish.**

The Secretary of State or the Welsh Ministers<sup>1</sup> may by order<sup>2</sup> designate certain waters<sup>3</sup> or land<sup>4</sup> adjacent to those waters<sup>5</sup> and prohibit the deposit<sup>6</sup> in those waters or on that land of shellfish<sup>7</sup> of any description or of shellfish specified in the order, which have been taken from any shellfish bed<sup>8</sup> either outside the waters so designated<sup>9</sup> or in an area specified in the order<sup>10</sup>. Where the Secretary of State considers or the Welsh Ministers consider it desirable for the purpose of preventing the spread of diseases or pests carried by shellfish, such an order may also prohibit the taking from any waters or land designated by the order of shellfish of any description or of the description specified in the order<sup>11</sup>. The order may provide that any prohibition imposed does not apply to any shellfish if they are deposited or taken under the authority of a licence granted by the Secretary of State or the Welsh Ministers<sup>12</sup> and if any conditions specified in that licence are complied with<sup>13</sup>. Where any person deposits any shellfish in any waters or on any land in contravention of such an order<sup>14</sup> and is convicted of an offence<sup>15</sup>

in respect of that contravention, the Secretary of State and the Welsh Ministers have power to remove those shellfish from those waters or that land and also to remove any other shellfish which in his or their opinion may have become affected by any disease or pest carried by the shellfish so deposited<sup>16</sup>. The Secretary of State or the Welsh Ministers may cause any shellfish so removed to be disposed of, whether by destruction, sale or otherwise, as he thinks or they think fit, and may recover expenses reasonably incurred in so removing or disposing of them from the person convicted<sup>17</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the making of such an order see para 959 ante. As to the orders made under this power see the Molluscan Shellfish (Control of Deposit) Order 1974, SI 1974/1555 (amended by SI 1985/159); and the Lobsters (Control of Deposit) Order 1981, SI 1981/994. As to notice of the order see para 1043 post.

3 Ie all tidal waters (whether forming part of the sea or not) within the seaward limits of the territorial waters adjacent to England and Wales, and all inland waters from which, in the opinion of the Secretary of State or the Welsh Ministers, diseases or pests carried by shellfish deposited in them may be conveyed into those tidal waters: Sea Fisheries (Shellfish) Act 1967 s 12(2) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 42). As to territorial waters see para 961 ante. As to inland waters cf para 964 note 3 ante.

4 As to the meaning of 'land' see para 1032 note 15 ante.

5 Ie land from which, in the opinion of the Secretary of State or the Welsh Ministers, diseases or pests carried by shellfish deposited on it may be conveyed into those waters: Sea Fisheries (Shellfish) Act 1967 s 12(3). Any prohibition imposed by the order on depositing shellfish in those waters also applies to depositing them on that land: s 12(3). See also note 6 infra.

6 A person is taken to deposit shellfish in any particular waters if he causes the shellfish to enter those waters; and any reference in ibid s 12 (as amended), to depositing shellfish on land includes throwing down, dropping or otherwise discharging them on that land: s 12(7).

7 As to the meaning of 'shellfish' see para 1032 note 6 ante.

8 For the meaning of 'shellfish bed' see para 1033 note 6 ante.

9 Sea Fisheries (Shellfish) Act 1967 s 12(1)(a), (3).

10 Ibid s 12(1)(b), (3).

11 Ibid s 12(3A) (added by the Diseases of Fish Act 1983 s 6(1), (2)).

12 Sea Fisheries (Shellfish) Act 1967 s 12(4)(a).

13 Ibid s 12(4)(b).

14 Ie an order under ibid s 12 (as amended). As to contravention see para 1043 text and note 4 post.

15 Ie an offence under the Sea Fisheries (Shellfish) Act 1967.

16 Ibid s 12(5).

17 Ibid s 12(6). As to the duty to pay receipts into the Exchequer see para 1053 post.

## UPDATE

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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#### **1042. Prohibition on importation of shellfish.**

Where any waters are designated by an order restricting the deposit or taking of shellfish<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> may by order<sup>3</sup> designate any area, consisting of any part of the coast or other land<sup>4</sup> adjacent to those waters, and prohibit from being imported<sup>5</sup> into that area shellfish of any description specified in the order except at such places, if any, as may be specified<sup>6</sup>.

A person is to be taken to contravene such an order if any shellfish to which the prohibition imposed by it are imported in contravention of it, and he, whether as owner, consignor or consignee, agent or broker, is in possession, or in any way entitled to the custody or control, of the shellfish at the time they are imported<sup>7</sup>.

1       Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 12 (as amended): see para 1041 ante. As to the meaning of 'shellfish' see para 1032 note 6 ante. As to other provisions imposing restrictions on the importation of fish see para 883 et seq ante.

2       As to the Secretary of State and the Welsh Ministers see para 846 ante.

3       Ie by order under the Sea Fisheries (Shellfish) Act 1967 s 13 (as amended). Such an order must be made by statutory instrument: see para 959 text and notes 22-27 ante. As to notice of the order see para 1043 text and notes 1-3 post. See the Lobsters (Control of Importation) Order 1981, SI 1981/995.

4       As to the meaning of 'land' see para 1032 note 15 ante.

5       In the Sea Fisheries (Shellfish) Act 1967 s 13 (as amended), 'imported' means imported on board any vessel, hovercraft or aircraft, whether from a place outside England and Wales or not; and 'hovercraft' means a hovercraft within the meaning of the Hovercraft Act 1968: Sea Fisheries (Shellfish) Act 1967 s 13(4) (amended by the Hovercraft Act 1968 s 3, Schedule para 4(e); the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 10(3); and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 42). See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381 et seq.

6       Sea Fisheries (Shellfish) Act 1967 s 13(1). Contravention of an order is an offence: see para 1043 text and note 4 post.

7       Ibid s 13(2).

#### **UPDATE**

#### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (vii) Shellfish/B. PROTECTION OF FISHERIES; PROHIBITIONS/1043. Supplementary provisions as to offences.

### **1043. Supplementary provisions as to offences.**

Where the Secretary of State or the Welsh Ministers<sup>1</sup> make an order prohibiting the deposit, taking or importation of shellfish<sup>2</sup>, he or they must take such steps (whether by the publication or display of notices or otherwise) as he or they may consider most suitable for informing all persons concerned of the effect of the order<sup>3</sup>.

Any person who contravenes the provisions of any such order (including any person who contravenes those provisions by not complying with any conditions specified in a licence granted thereunder) is guilty of an offence<sup>4</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 Ie an order under the Sea Fisheries (Shellfish) Act 1967 ss 12, 13 (both as amended): see paras 1041-1042 ante. As to the meaning of 'shellfish' see para 1032 note 6 ante.

3 Ibid s 14(1).

4 Ibid s 14(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both: s 14(2) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As from a day to be appointed the reference to imprisonment for a term not exceeding three months is repealed by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9. At the date at which this volume states the law no such day had been appointed. As to the powers of entry of authorised inspectors see para 1050 post.

## **UPDATE**

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(4) REGULATION OF SEA FISHERIES/ (vii) Shellfish/C. SALE AND CLEANSING/1044. Prohibition on sale of oysters between certain dates.

## **C. SALE AND CLEANSING**

### **1044. Prohibition on sale of oysters between certain dates.**

Any person who between 14 May in any year and the following 4 August sells, exposes for sale, buys for sale, or consigns to any person for the purpose of sale any description of oysters<sup>1</sup> is guilty of an offence and liable on summary conviction to a fine<sup>2</sup>. In any case the offender is

liable to forfeit the oysters so exposed for sale, bought for sale or consigned to any person for the purpose of sale<sup>3</sup>. A person is not guilty of an offence<sup>4</sup> if he satisfies the court that the oysters alleged to have been sold, exposed for sale, bought for sale or consigned to any person for the purpose of sale were: (1) originally taken within the waters of a foreign state<sup>5</sup>; (2) preserved in tins or otherwise cured<sup>6</sup>; (3) intended for the purpose of oyster cultivation within the same district<sup>7</sup> in which the oysters were taken<sup>8</sup>; (4) taken from any place for cultivation<sup>9</sup> with the consent of the Secretary of State or the Welsh Ministers<sup>10</sup>; or (5) were oysters of a particular kind<sup>11</sup>.

1 As to oysters see the definition of 'shellfish' in para 1032 note 6 ante.

2 Sea Fisheries (Shellfish) Act 1967 s 16(1). The fine must not exceed level 4 on the standard scale: s 16(1) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the territorial scope of the Sea Fisheries (Shellfish) Act 1967 s 16 (as amended) see para 958 ante. As to the standard scale see para 841 note 4 ante. As to jurisdiction see para 1051 post. As to the power to make emergency orders on public health grounds see the Food and Environment Protection Act 1985 s 1 (as amended); and FOOD vol 18(2) (Reissue) para 316.

3 Sea Fisheries (Shellfish) Act 1967 s 16(1). As to the power to seize oysters see para 1050 post.

4 It is an offence under *ibid* s 16 (as amended).

5 *Ibid* s 16(2)(a). Where foreign oysters are deposited, for purposes of preservation for sale only, in English waters, they are deemed to have been taken within the waters of a foreign state: *Robertson v Johnson* [1893] 1 QB 129, DC.

6 Sea Fisheries (Shellfish) Act 1967 s 16(2)(b).

7 For the purposes of *ibid* s 16(2)(c), a district is: (1) the Thames Estuary, bounded by a line drawn from Orford Ness to the North Foreland (s 16(3)(a)); and (2) any other area for the time being constituted a district for the purposes of s 16 (as amended) by an order of the Secretary of State or the Welsh Ministers (s 16(3)(b)). As to the Secretary of State and the Welsh Ministers see para 846 ante. Where the place at which the oysters are taken is not within any such district, so much of the area within ten miles of that place as is not included in any such district is deemed to be a district for these purposes: s 16(3). An order under s 16(3)(b) must be made by statutory instrument and may be varied or revoked by a subsequent order: see para 959 text and notes 22-27 ante. Being of local application, orders made under this power are not recorded in this work.

8 *Ibid* s 16(2)(c).

9 Local fisheries committees have power to make byelaws constituting districts of oyster cultivation: see para 975 text and note 6 ante.

10 Sea Fisheries (Shellfish) Act 1967 s 16(2)(d).

11 *Ibid* s 16(2)(e) (added by the Sea Fisheries (Shellfish) Act 1973 s 1). The kinds of oysters concerned are Pacific or Japanese oysters (*Crassostrea gigas*), Portuguese oysters (*Crassostrea angulata*), or other members of the genus *Crassostrea*: Sea Fisheries (Shellfish) Act 1967 s 16(2)(e) (as so added).

## UPDATE

### 1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1045. Spawning lobsters.**

If the Secretary of State or the Welsh Ministers<sup>1</sup> by order<sup>2</sup> so direct, no person may, in England and Wales, land, sell, expose or offer for sale, or have in his possession for the purpose of sale, any lobster carrying spawn attached to its tail or some other exterior part, or which shows from its condition that, at the time when it was taken, it was carrying spawn so attached<sup>3</sup>. Any person who contravenes such an order is guilty of an offence<sup>4</sup>. The court also has power to order certain forfeitures<sup>5</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to the making of such an order see para 959 ante. The order may be varied or revoked by subsequent order: see the Sea Fisheries (Shellfish) Act 1967 s 17(5); and para 959 text and notes 22-25 ante. At the date at which this volume states the law no such order had been made.

3 Ibid s 17(3). As to lobsters see the definition of 'shellfish' in para 1032 note 6 ante. As to the territorial extent of s 17 (as amended) see para 958 ante.

4 Ibid s 17(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 17(4) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the standard scale see para 841 note 4 ante. An offence under the Sea Fisheries (Shellfish) Act 1967 s 17 (as amended) is not committed by reason of any act done or omitted by a person in the course of fish farming if it is done or omitted under the authority of an exemption conferred by the Secretary of State or the Welsh Ministers in accordance with any conditions attached to that exemption: Fisheries Act 1981 s 33(1), Sch 4 Pt I. 'Fish farming' means the breeding, rearing or cultivating of fish (including shellfish) whether or not for the purpose of producing food for human consumption: s 33(6).

5 The court by which an offender is convicted of an offence under the Sea Fisheries (Shellfish) Act 1967 s 17 (as amended) may order the forfeiture of all crabs or lobsters found in his possession or alleged to have been sold, exposed or offered for sale, bought for sale, or consigned to any person for the purpose of sale, in contravention of s 17(1) (see para 1046 post) or of an order under s 17(3) (as amended), as the case may be: s 17(4). As to powers of seizure see para 1050 post.

## **UPDATE**

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1045 Spawning lobsters**

TEXT AND NOTES--Sea Fisheries (Shellfish) Act 1967 s 17 further amended: Marine and Coastal Access Act 2009 ss 212, 213(1)-(3).

NOTE 4--Fisheries Act 1981 Sch 4 Pt 1 amended: Marine and Coastal Access Act 2009 Sch 15 para 5, Sch 16 para 18, Sch 22 Pt 5.

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#### **1046. Spawning crabs and soft crabs.**

Any person who takes, has in his possession, sells, exposes for sale, buys for sale, or consigns to any person for the purpose of sale: (1) any edible crab<sup>1</sup> carrying any spawn attached to the tail or other exterior part; or (2) any edible crab which has recently cast its shell, is guilty of an offence<sup>2</sup>. The court also has power to order certain forfeitures<sup>3</sup>.

1 As to crabs see the definition of 'shellfish' in para 1032 note 6 ante.

2 Sea Fisheries (Shellfish) Act 1967 s 17(1)(a), (b). This provision is subject to s 17(2), which provides that a person is not guilty of an offence under s 17(1) if he satisfies the court that the edible crabs in question were intended for bait for fishing. A local fisheries committee may by byelaw direct that this defence is not to apply: see para 975 text and notes 8-9 ante. As to jurisdiction see para 1051 post. As to the territorial extent of s 17 (as amended) see para 958 ante. For an exemption in relation to fish farming see para 1045 note 4 ante. A person guilty of an offence under s 17(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 17(4) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the standard scale see para 841 note 4 ante.

3 As to the forfeitures see para 1045 note 5 ante. As to powers of seizure see para 1050 post.

#### **UPDATE**

#### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **1046 Spawning crabs and soft crabs**

TEXT AND NOTE 2--Sea Fisheries (Shellfish) Act 1967 s 17 further amended: Marine and Coastal Access Act 2009 s 212.

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#### **1047. Cleansing of shellfish.**

A food authority<sup>1</sup> may provide, whether within or outside its area, tanks or other apparatus for cleansing<sup>2</sup> shellfish<sup>3</sup>. A food authority may contribute towards the expenses incurred<sup>4</sup> by any other such authority, or towards expenses incurred by any other person in providing, and making available to the public, tanks or other apparatus for cleansing shellfish<sup>5</sup>.



This does not authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions as may be approved by the Secretary of State or the Welsh Ministers<sup>6</sup> before the work is commenced<sup>7</sup>.

- 1 As to food authorities see FOOD vol 18(2) (Reissue) para 251.
- 2 'Cleansing', in relation to shellfish, includes subjecting them to any germicidal treatment: Food Safety Act 1990 s 24(4).
- 3 Ibid s 24(1). See also FOOD vol 18(2) (Reissue) para 255.
- 4 Ie incurred under ibid s 24.
- 5 Ibid s 24(2).
- 6 As to the Secretary of State and the Welsh Ministers see para 846 ante.
- 7 Food Safety Act 1990 s 24(3).

## **UPDATE**

### **1032-1047 Power to make orders as to several fisheries for shellfish ... Cleansing of shellfish**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1047 Cleansing of shellfish**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## ***D. ENFORCEMENT, COMPENSATION AND ADMINISTRATION***

### **1048. Damage by coast protection authorities.**

Where, in consequence of the carrying out of coast protection work in exercise of their statutory powers<sup>1</sup> coast protection authorities<sup>2</sup> cause damage to oyster or mussel beds<sup>3</sup>, the owners are entitled to claim compensation<sup>4</sup>.

1 Ie their powers under the Coast Protection Act 1949 Pt I (ss 1-33) (as amended): see WATER AND WATERWAYS vol 101 (2009) PARA 505.

2 As to coast protection authorities see *ibid* s 1 (as amended); and *WATER AND WATERWAYS* vol 101 (2009) PARA 508 et seq.

3 The beds are 'land', which includes land covered by water: see *ibid* s 49(1).

4 See *ibid* s 19(1)(a). See further *WATER AND WATERWAYS* vol 101 (2009) PARA 530.

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#### **1049. Procedure for making orders as to fisheries for shellfish.**

Where an application for an order as to fisheries for shellfish<sup>1</sup> is made to the Secretary of State or the Welsh Ministers<sup>2</sup>, he or they may either refuse the application or prepare a draft order and serve a copy of it on the applicants<sup>3</sup>, who must then cause printed copies of the draft order to be published and circulated in such manner as the Secretary of State thinks or the Welsh Ministers think sufficient and proper for giving information to all parties interested<sup>4</sup>. They must also give notice of the application, in such manner as the Secretary of State or the Welsh Ministers direct or approve, to the owners or reputed owners, lessees or reputed lessees, and occupiers, if any, of the portion of the sea shore<sup>5</sup> to which the proposed order relates and of the adjoining land<sup>6</sup>. During the period of one month<sup>7</sup> after the first publication of the draft order, the Secretary of State or the Welsh Ministers must receive any objections or representations made to him or them in writing respecting the proposed order<sup>8</sup>. Where any such objection has been duly made and not withdrawn and the Secretary of State considers or the Welsh Ministers consider the objection neither frivolous nor irrelevant, he or they must, as soon as conveniently may be after the expiration of the one month objection period, appoint some fit person to act as inspector regarding the proposed order<sup>9</sup>. The inspector must proceed to make an inquiry concerning its subject matter<sup>10</sup>, and for this purpose must hold a sitting or sittings<sup>11</sup> in some convenient place in the neighbourhood of the portion of the sea shore to which the proposed order relates<sup>12</sup>. He must there<sup>13</sup> take and receive any evidence and information offered, and hear and inquire into any objections or representations made respecting the proposed order<sup>14</sup>. He may take evidence, and by summons under his hand require the attendance of any person, and examine him and any person who attends before him, on oath or otherwise, as he thinks expedient<sup>15</sup>. Any person so summoned who, after his reasonable expenses have been tendered to him, refuses or neglects to obey the summons, and any person who refuses or neglects to answer any question which the inspector is authorised to ask, is guilty of an offence<sup>16</sup>. The inspector must make a written report to the Secretary of State or the Welsh Ministers, setting out the result of the inquiry, and stating whether in his opinion the proposed order should be made, with or without alteration, specifying any alteration he recommends and his reasons for it<sup>17</sup>. This report must also state the objections and representations, if any, made on the inquiry and his opinion on them<sup>18</sup>.

As soon as conveniently may be after the expiration of the one month objection period or after receipt of any inspector's report, the Secretary of State or the Welsh Ministers must, after considering the objections or representations, if any, and any report, either refuse the application or settle and make an order in such form and containing such provisions as he or they may think expedient<sup>19</sup>.

1 Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante. As to the meaning of 'shellfish' see para 1032 note 6 ante.

2 As to the Secretary of State and the Welsh Ministers see para 846 ante. As to expenses see para 1053 post.

3 Sea Fisheries (Shellfish) Act 1967 s 1(2), Sch 1 para 1.

4 Ibid Sch 1 para 2.

5 For the meaning of 'the sea shore' see para 1032 note 9 ante.

6 Sea Fisheries (Shellfish) Act 1967 Sch 1 para 2. As to the meaning of 'land' see para 1032 note 15 ante.

7 le one calendar month: see the Interpretation Act 1978 s 5, Sch 1; and STATUTES vol 44(1) (Reissue) para 1387.

8 Sea Fisheries (Shellfish) Act 1967 Sch 1 para 3.

9 Ibid Sch 1 para 4(1), (2).

10 Ibid Sch 1 para 4(3). Without prejudice to Sch 1 para 4, the Secretary of State or the Welsh Ministers may cause any such inquiry as he thinks or they think fit to be held with respect to any proposed order: Sch 1 para 5.

11 The inspector may from time to time adjourn any sitting: ibid Sch 1 para 4(3). Not less than 28 days' notice must be published in such manner as the Secretary of State or the Welsh Ministers may direct of every sitting other than an adjourned sitting: Sch 1 para 4(6) (amended by the Sea Fisheries Act 1968 s 15(1), (7)).

12 Sea Fisheries (Shellfish) Act 1967 Sch 1 para 4(3).

13 le at the sitting or sittings in some convenient place: see ibid Sch 1 para 4(3).

14 Ibid Sch 1 para 4(3).

15 Ibid Sch 1 para 4(4). The inspector may administer an oath or take any affidavit or declaration for the purposes of the inquiry: Sch 1 para 4(4).

16 Ibid Sch 1 para 4(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level one on the standard scale: Sch 1 para 4(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante. As to the service of documents under this provision see para 1051 post.

17 Sea Fisheries (Shellfish) Act 1967 Sch 1 para 4(7).

18 Ibid Sch 1 para 4(7).

19 Ibid Sch 1 para 6. As to the publication of notice of the order see para 1032 text and note 16 ante.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1049 Procedure for making orders as to fisheries for shellfish**

TEXT AND NOTES--Sea Fisheries (Shellfish) Act 1967 Sch 1 further amended and repealed in part: Marine and Coastal Access Act 2009 ss 202(4), 214, Sch 22 Pt 5.

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### **1050. Powers of inspectors and other authorised persons as to shellfish.**

For the purposes of carrying out any inquiry or examination under the statutory powers<sup>1</sup>, an inspector or other person appointed by the Secretary of State or the Welsh Ministers<sup>2</sup> may take evidence<sup>3</sup>. He may by summons under his hand require the attendance of any person and examine him and any person who attends before him, on oath or otherwise, as he thinks expedient, and may administer an oath or take any affidavit or declaration for the purpose of the inquiry or examination<sup>4</sup>.

For the purpose of carrying out any such inquiry or examination, a person so authorised by the Secretary of State or the Welsh Ministers has the right at any reasonable time, to enter<sup>5</sup> any land<sup>6</sup> within the limits of the fishery, and to obtain and take away samples<sup>7</sup> of any shellfish found within those limits<sup>8</sup>. When any such sample has served the purpose for which it was taken, the person who took the sample may dispose of it as he may determine<sup>9</sup>.

Any person who obstructs an inspector or other person in the exercise of his powers, or who refuses or without reasonable excuse fails to provide any information reasonably required by an inspector or other person in the exercise of his powers, is guilty of an offence<sup>10</sup>.

An inspector authorised by the Secretary of State or the Welsh Ministers has the right<sup>11</sup>, at any reasonable time, to enter any land designated by an order prohibiting the deposit or taking of shellfish<sup>12</sup>, or any waters, or land covered by waters, designated by such an order, where either: (1) the inspector has reasonable grounds for believing that the prohibition imposed by the order<sup>13</sup> is being or has been contravened<sup>14</sup>; or (2) entry is required for the purpose of removing any shellfish which the Secretary of State is or the Welsh Ministers are empowered<sup>15</sup> to remove<sup>16</sup>. An inspector having such a right to enter any land or waters also has the right to obtain and take away samples (which are to be marked, labelled or otherwise made capable of identification) of any shellfish found there, and to dispose of any such sample as the inspector may determine<sup>17</sup>. Any person who obstructs an inspector in the exercise of any such right is guilty of an offence<sup>18</sup>.

Any person who has power under any Act<sup>19</sup>, charter or byelaw to search for, seize, remove or condemn any food unfit for human consumption or to order such food to be destroyed or otherwise disposed of, may exercise the like power with respect to any oysters, crabs or lobsters which, in contravention of the statutory provisions prohibiting the sale of oysters between certain dates<sup>20</sup> and the taking and sale of crabs and lobsters<sup>21</sup>, are in the possession of any person or exposed or offered by any person for sale or have been bought by or consigned to any person for the purpose of sale<sup>22</sup>.

1       Ie for the purpose of carrying out any inquiry or examination with respect to a fishery in pursuance of the Sea Fisheries (Shellfish) Act 1967 s 5(2): s 5(3). As to such inquiry or examination see para 1036 text and notes 9-10 ante.

2       As to the Secretary of State and the Welsh Ministers see para 846 ante.

3       Sea Fisheries (Shellfish) Act 1967 s 5(3).

4       Ibid s 5(3).

5       These powers of entry are subject to ibid s 5(5), which provides that a right of entry under s 5(4) is not to be exercisable in respect of any land unless not less than 24 hours' notice of the intended entry has been given

to the occupier of the land, and also to the grantees if they are not the occupiers of the land: s 5(5). The person exercising the right of entry must, if so requested, produce written evidence of his authority before entering: s 5(5). Any duty imposed on any person by s 5(2) (see para 1036 ante) to afford facilities for any inquiry or examination in respect of a fishery includes a duty to afford facilities for the exercise of any right exercisable in respect of the fishery in accordance with s 5(4), (5): s 5(6). As to such inquiry or examination and the duty to provide facilities see para 1036 text and notes 9-10 ante.

6 As to the meaning of 'land' see para 1032 note 15 ante.

7 The samples must be marked, labelled or otherwise made capable of identification: Sea Fisheries (Shellfish) Act 1967 s 5(4).

8 Ibid s 5(4).

9 Ibid s 5(4). This provision has effect notwithstanding anything in the Sea Fisheries (Shellfish) Act 1967: s 5(4).

10 Ibid s 5(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 5(7) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I). As to the standard scale see para 841 note 4 ante.

11 The right is subject to the Sea Fisheries (Shellfish) Act 1967 s 14(4), which provides that a right of entry under s 14(3) (as amended) is not to be exercised in respect of any occupied land unless not less than 24 hours' notice of the intended entry has been given to the occupier; and that the inspector must, if so required, produce written evidence of his authority before entering: s 14(4).

12 Ie an order under ibid s 12 (as amended): see para 1041 ante. As to the meaning of 'shellfish' see para 1032 note 6 ante.

13 Ie in pursuance of ibid s 12(1): see para 1041 ante.

14 Ibid s 14(3)(a) (amended by the Diseases of Fish Act 1983 s 6). Where, however, an inspector enters any land or waters by virtue of the Sea Fisheries (Shellfish) Act 1967 s 14(3)(a) (as amended), he must retain any shellfish so taken for so long as may be necessary to secure that they are available for production in any proceedings for an offence under s 14 (as amended) in respect of the contravention in question: s 14(3) proviso.

15 Ie under ibid s 12(5): see para 1041 ante.

16 Ibid s 14(3)(b).

17 Ibid s 14(3).

18 Ibid s 14(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 14(5) (amended by virtue of the Criminal Justice Act 1982 s 46; and the Criminal Justice and Public Order Act 1994 s 157(1), Sch 8 Pt I).

19 See eg para 1011 ante. See also the Food Safety Act 1990 s 9 (as amended) (examination and seizure of suspected food); and FOOD vol 18(2) (Reissue) para 284.

20 Ie in contravention of the Sea Fisheries (Shellfish) Act 1967 s 16 (as amended): see para 1044 ante.

21 Ie in contravention of ibid s 17 (as amended): see paras 1045-1046 ante.

22 Ibid s 18. As to the territorial extent of this provision see para 958 ante.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1051. Legal proceedings.**

The portion of the sea shore<sup>1</sup> to which an order as to a fishery for shellfish<sup>2</sup> relates is for all purposes of jurisdiction deemed to be within the body of the adjoining county (so far as it is not by law within it) or to be within the body of each of them, if more than one<sup>3</sup>. For the purposes of and incidental to the jurisdiction of any magistrates' court, any offence under the statutory provisions prohibiting the sale of oysters between certain dates<sup>4</sup> and the taking and sale of certain crabs and lobsters<sup>5</sup>, is deemed to have been committed either in the place in which it was actually committed or in any place in which the offender may for the time being be found<sup>6</sup>.

Where it is necessary in any legal proceedings to prove that the requirements of an order as to fisheries for shellfish<sup>7</sup> or of any Act as to: (1) the buoying or other marking of the limits of any fishery for shellfish of any description to which the order applies, or of any fishery for oysters or mussels to which that Act applies<sup>8</sup>; or (2) the publication, posting or distribution of notices of those limits<sup>9</sup>, have been complied with, or that notice of the provisions of the order or Act relating to the fishery has been duly published, the statutory certificate<sup>10</sup> is to be received as evidence of compliance with those requirements or publication of that notice<sup>11</sup>.

Service of any summons or other document in any proceedings relating to the offences of breaching an order granting a right of regulating a fishery<sup>12</sup>, fishing by illegal means within a fishery or oyster bed<sup>13</sup>, or obstructing an inspector<sup>14</sup>, may be effected by leaving the document for the person to be served on board any sea fishing boat<sup>15</sup> to which he belongs with the person being or appearing to be in charge of the boat<sup>16</sup>.

1 For the meaning of 'the sea shore' see para 1032 note 9 ante.

2 Ie an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended): see para 1032 ante. As to the meaning of 'shellfish' see para 1032 note 6 ante.

3 Ibid s 10(1) (renumbered by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 3). This provision contains also a reference to the body of the adjoining borough, but boroughs (except those in rural districts) outside Greater London and the Isles of Scilly ceased to exist on 1 April 1974: see the Local Government Act 1972 s 1(10); and LOCAL GOVERNMENT vol 69 (2009) PARA 5. In the application of the Sea Fisheries (Shellfish) Act 1967 s 10 (as amended) to Wales, the reference to a county in s 10(1) (as renumbered) includes a reference to a preserved county as defined by the Local Government (Wales) Act 1994 s 64: see the Sea Fisheries (Shellfish) Act 1967 s 10(2) (added by the Local Government Act 1994 s 1(3), Sch 2 para 3).

4 Ie an offence under the Sea Fisheries (Shellfish) Act 1967 s 16 (as amended): see para 1044 ante.

5 Ie an offence under ibid s 17 (as amended): see paras 1045-1046 ante.

6 Ibid s 19(1). As to the territorial scope of this provision see para 958 ante.

7 Ie an order under ibid s 1 (as amended): see para 1032 ante.

8 Ibid s 8(a).

9 Ibid s 8(b).

10 Ie a certificate, purporting to be under the hand of one of the secretaries, under secretaries or assistant secretaries of the Secretary of State or the Welsh Ministers, certifying that he is or they are satisfied that the requirements of the order or Act have been complied with or that the notice was duly published: ibid s 8. As to the Secretary of State and the Welsh Ministers see para 846 ante.

11 Ibid s 8.

12 le in any proceedings under ibid s 3(3) (as amended): see para 1034 text and notes 8-9 ante.

13 le in any proceedings under ibid s 7(4) (as amended): see para 1038 ante.

14 le in any proceedings under ibid Sch 1 para 4(5) (as amended): see para 1049 text and note 16 ante.

15 'Sea fishing boat' means a vessel of whatever size, and in whatever way propelled, which is used by any person in fishing for sea fish; and 'sea fish' means fish of any description found in the sea (other than fish of the salmon species) and includes shellfish: ibid s 22(2). As to the meaning of 'shellfish' see para 1032 note 6 ante.

16 Ibid s 11. This is expressed to be without prejudice to any provision made by or under any other Act prescribing the manner in which service of any document may be effected. See eg the Magistrates' Courts Rules 1981, SI 1981/552, r 99 (as amended); and MAGISTRATES vol 29(2) (Reissue) para 690.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1052. Grants for restoration of oyster, mussel and cockle fisheries.**

With Treasury approval, the Secretary of State or the Welsh Ministers<sup>1</sup> may make grants or loans to any person in respect of any expenses incurred or to be incurred by him in cleansing and reinstating (including restocking) any shellfish beds<sup>2</sup> which have been affected by any disease or pest<sup>3</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante. As to the duty to pay interest and repayments into the Exchequer see para 1053 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

2 le any shellfish bed within the limits of a fishery in respect of which an order under the Sea Fisheries (Shellfish) Act 1967 s 1 (as amended) (see para 1032 ante) is for the time being in force, and any other shellfish bed used for the propagation or cultivation of oysters, mussels or cockles, from which a person has an exclusive right to take oysters, mussels or cockles: s 9(2). For the meaning of 'shellfish bed' see para 1033 note 6 ante. As to shellfish, oysters, mussels and cockles see the definition of 'shellfish' in para 1032 note 6 ante.

3 Ibid s 9(1).

## UPDATE

**1049-1058 Procedure for making orders as to fisheries for shellfish ...  
Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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**1053. Expenses, receipts and reports.**

Any expenditure incurred by the Secretary of State or the Welsh Ministers<sup>1</sup> under the statutory provisions relating to shellfish<sup>2</sup> is paid out of money provided by Parliament<sup>3</sup>.

All expenses incurred by the Secretary of State or the Welsh Ministers in relation to any application for an order as to a fishery for shellfish<sup>4</sup>, or to any order made in consequence of the application, must be defrayed by the applicants<sup>5</sup>. On or at any time after the making of the application, the Secretary of State or the Welsh Ministers must, if he thinks or they think fit, require the applicants to pay such sum as he or they may think requisite for or on account of those expenses, or to give security to his or their satisfaction for the payment of those expenses on demand<sup>6</sup>.

Any receipts of the Secretary of State or the Welsh Ministers under these provisions, or under the power to recover expenses incurred in removing or disposing of diseased shellfish<sup>7</sup>, must be paid into the Exchequer, as must any sums received by way of interest on, or repayment of, loans<sup>8</sup> for cleansing and reinstating shellfish beds<sup>9</sup>.

After the end of every year the Secretary of State and the Welsh Ministers must prepare a report respecting applications made to him or them and proceedings under the statutory provisions<sup>10</sup> during that year<sup>11</sup>.

1 As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 Ie under the Sea Fisheries (Shellfish) Act 1967. As to the meaning of 'shellfish' see para 1032 note 6 ante.

3 Ibid s 21(1).

4 Ie an order under ibid s 1 (as amended): see para 1032 ante.

5 Ibid s 1(2), Sch 1 para 8. As to these orders see para 1032 ante. As to the procedure on making the orders see para 1049 ante.

6 Ibid Sch 1 para 8.

7 Ie receipts under ibid Sch 1 para 8 (see the text to notes 4-6 supra) or s 12(6) (see para 1041 text and note 17 ante).

8 Ie loans under ibid s 9 (as amended): see para 1052 ante.

9 Ibid s 21(2).

10 Ie under ibid ss 1-5 (as amended): see para 1032 et seq ante.



11 Ibid s 6. As respects England, the Secretary of State must lay a copy of the report before each House of Parliament: see s 6. As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As respects Wales, the Welsh Ministers must lay a copy of the report before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

## **UPDATE**

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1054. Creation and constitution.

## **(5) THE SEA FISH INDUSTRY AUTHORITY**

### **1054. Creation and constitution.**

The sea fish industry in England and Wales was, until 1 October 1981<sup>1</sup>, represented by two bodies: the White Fish Authority and the Herring Industry Board. These bodies were both abolished by the Fisheries Act 1981<sup>2</sup> and a new body, the Sea Fish Industry Authority, was created<sup>3</sup>.

The Authority consists of not more than 12 members appointed by the Secretary of State or the Welsh Ministers<sup>4</sup> who must appoint one to be chairman and one to be vice-chairman<sup>5</sup>. The chairman, vice-chairman and two other members of the Authority must be persons appearing to the Secretary of State or the Welsh Ministers to have no financial or commercial interests likely to affect them in the discharge of their functions as members<sup>6</sup>. The other members are persons appearing to the Secretary of State or the Welsh Ministers (having consulted organisations representing the sea fish industry) to represent the interests of the industry or any part of it<sup>7</sup>. Provision is made for the payment of remuneration<sup>8</sup>, pensions<sup>9</sup> and compensation for loss of office<sup>10</sup>.

The Authority largely regulates its own procedure<sup>11</sup>. However, certain procedural matters are prescribed. For example, the quorum for meetings of the Authority is determined by the Secretary of State or the Welsh Ministers<sup>12</sup>. If at any meeting the votes are equally divided on any question, the person acting as chairman of the meeting has a second or casting vote<sup>13</sup>. The validity of any proceedings of the Authority is not affected by any vacancy among the members or by any defect in the appointment of a member<sup>14</sup>.

If a member of the Authority has any pecuniary interest, direct or indirect, in any contract or proposed contract and is present at a meeting of the Authority at which the contract is the subject of consideration, he must disclose the fact and must not take part in the consideration or discussion of, or vote on any question with respect to, the contract<sup>15</sup>. A general notice given in writing by a member of the Authority to the officer designated by it for the purpose to the effect that he is a member or director or in the employment of a specified company or other body, or that he is a partner or in the employment of a specified person, is deemed<sup>16</sup> to be a

sufficient disclosure of his interest in any contract or proposed contract relating to that company or other body or to that person which may be the subject of consideration after the date of the notice<sup>17</sup>.

For the purpose of assisting the Authority in the discharge of its functions it may appoint committees consisting of or including persons who are not members of the Authority<sup>18</sup>.

The application of the Authority's common seal to any document must be attested by at least one member of the Authority and by the person for the time being acting as secretary to the Authority<sup>19</sup>. Any document purporting to be a document duly executed or issued under the seal of the Authority or on behalf of the Authority is deemed, until the contrary is proved, to be a document so executed or issued<sup>20</sup>.

1 See the Fisheries Act 1981 s 46; the Fisheries Act 1981 (Commencement No 1) Order 1981, SI 1981/1357; and the Fisheries Act 1981 (Commencement No 2) Order 1981, SI 1981/1640.

2 See the Fisheries Act 1981 s 13, Sch 3 (amended by the Statute Law (Repeals) Act 2004 s 1, Sch 1) (which provided for the transfer of staff, pensions, and statutory functions to the Sea Fish Industry Authority).

3 Fisheries Act 1981 s 1(1). The Authority is a body corporate (Sch 1 para 1), and except as provided in ss 2(5), 3(6), 16(1), it is not to be regarded as acting on behalf of the Crown and neither it nor its members, officers or servants are to be regarded as Crown servants (Sch 1 para 2).

4 See *ibid* s 14(1) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, arts 3, 5, Sch 23 Pt I, Pt II para 3(1), (6)). As to the Secretary of State and the Welsh Ministers see the Fisheries Act 1981 s 14(1); and para 846 ante.

5 *Ibid* s 1(2). Members of the Authority hold and vacate office in accordance with the terms of the instrument under which they are appointed, but a person must not hold office for more than three years under any one appointment: Sch 1 para 3. A member may resign by a notice in writing to the Secretary of State or the Welsh Ministers: Sch 1 para 4. The Secretary of State or the Welsh Ministers may terminate the appointment of a member of the Authority if he is or they are satisfied that:

(1) in a period of six months beginning not more than nine months previously he has, without the consent of the other members of the Authority, failed to attend the meetings of the Authority (Sch 1 para 5(a));

(2) he is an undischarged bankrupt or has made an arrangement with his creditors or is insolvent (Sch 1 para 5(b));

(3) he is by reason of physical or mental illness or for any other reason incapable of carrying out his duties (Sch 1 para 5(c)); or

(4) he has been convicted of such criminal offence, or his conduct has been such, that it is not in the opinion of the Secretary of State or the Welsh Ministers fitting that he should remain a member (Sch 1 para 5(d)).

A person who ceases or has ceased to be a member is eligible for re-appointment: Sch 1 para 6.

6 *Ibid* s 1(3). The Secretary of State and the Welsh Ministers must satisfy themselves from time to time that the persons appointed under s 1(3) continue to have no such financial or commercial interests; and any such person must, when requested by the Secretary of State or the Welsh Ministers so to do, furnish to him or them such information as he or they may reasonably require for the performance of that duty: Sch 1 para 9.

7 *Ibid* s 1(4). For the purposes of Pt I (as amended) (other than s 2(2A) (as added), s 3(5)), 'the sea fish industry' means the sea fish industry in the United Kingdom and a person is regarded as engaged in the sea fish industry if: (1) he carries on the business of operating vessels for catching or processing sea fish or for transporting sea fish or sea fish products, being vessels registered in the United Kingdom; or (2) he carries on in the United Kingdom the business of breeding, rearing or cultivating sea fish for human consumption, of selling sea fish or sea fish products by wholesale or retail, of buying sea fish or sea fish products by wholesale, of importing sea fish or sea fish products or of processing sea fish (including the business of a fish fryer): s 14(2). For the meaning of 'United Kingdom' see para 843 note 1 ante. 'Sea fish' means fish of any kind found in the sea, including shellfish and, subject to s 4(8)(a) (see para 1057 post), any part of any such fish but does not include salmon or migratory trout: s 14(1).

8 See *ibid* Sch 1 para 7.

9 See *ibid* Sch 1 paras 8, 11.

10 See *ibid* Sch 1 para 8. Any sums required for making such payments to members of the Sea Fish Industry Authority are to be made out of moneys provided by Parliament: see s 43.

11 *Ibid* Sch 1 para 17. This is subject to s 16(2), Sch 1 paras 12-16: see the text and notes 12-18 *infra*.

12 *Ibid* Sch 1 para 12. Where any business falls to be transacted by a meeting attended only by members appointed under s 1(3) a separate quorum may be determined for such meetings: Sch 1 para 12.

13 *Ibid* Sch 1 para 13.

14 *Ibid* Sch 1 para 14.

15 *Ibid* Sch 1 para 15(1). Any disclosure made under Sch 1 para 15(1) must be recorded in the minutes of the meeting at which it is made: Sch 1 para 15(3).

16 *Ibid* unless and until the notice is withdrawn: see *ibid* Sch 1 para 15(2).

17 *Ibid* Sch 1 para 15(2). Any notice given under Sch 1 para 15(2) must be recorded in a book to be kept for the purpose: Sch 1 para 15(3).

18 *Ibid* Sch 1 para 16(1). The Authority may defray the reasonable expenses incurred in the execution of their duties by members of such committees who are not members of the Authority: Sch 1 para 16(2).

19 *Ibid* Sch 1 para 18.

20 *Ibid* Sch 1 para 19.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1055. Duties.

### **1055. Duties.**

It is the duty of the Sea Fish Industry Authority<sup>1</sup> to exercise its powers under Part I of the Fisheries Act 1981<sup>2</sup> for the purpose of promoting the efficiency of the sea fish industry<sup>3</sup> and so as to serve the interests of that industry as a whole<sup>4</sup>. In exercising its powers the Authority must have regard to the interests of consumers of sea fish<sup>5</sup> and sea fish products<sup>6</sup>.

Where a levy<sup>7</sup> has effect in relation to sea fish or sea fish products from the sea fish industries of member states other than the United Kingdom<sup>8</sup>, the Authority must exercise its powers to secure that benefits conferred are commensurate with any burden directly or indirectly borne in consequence of the levy<sup>9</sup>. The Secretary of State and the Welsh Ministers<sup>10</sup> may, after consultation with the Authority, give such directions as he thinks or they think necessary for ensuring the Authority's activities are consistent with these constraints<sup>11</sup>, and such other

directions as appear to be in the public interest, and the Authority is under a duty to give effect to such directions<sup>12</sup>.

It is the duty of the Authority, if so required by any Minister of the Crown or the Welsh Ministers, to act as their agent<sup>13</sup>.

- 1 As to the creation and constitution of the Authority see para 1054 ante.
- 2 See the Fisheries Act 1981 Pt I (ss 1-14) (as amended).
- 3 For the meaning of 'the sea fish industry' see para 1054 note 7 ante.
- 4 Fisheries Act 1981 s 2(1).
- 5 For the meaning of 'sea fish' see para 1054 note 7 ante.
- 6 Fisheries Act 1981 s 2(2).
- 7 Ie a levy imposed under ibid s 4: see para 1057 post.
- 8 Ie member states of the European Community other than the United Kingdom: see ibid s 2. For the meaning of 'United Kingdom' see para 843 note 1 ante.
- 9 Ibid s 2(2A) (added by the Fisheries Act 1981 (Amendment) Regulations 1989, SI 1989/1190, reg 2(1), (2)).
- 10 As to the Secretary of State and the Welsh Ministers see the Fisheries Act 1981 s 14(1); and para 846 ante.
- 11 Ie consistent with ibid s 2(1), (2A) (as added); see the text and notes 1-9 supra.
- 12 Ibid s 2(3) (amended by the Fisheries Act 1981 (Amendment) Regulations 1989, SI 1989/1190, reg 2(1), (2)). Where a direction is given by the Secretary of State it must be laid before Parliament: Fisheries Act 1981 s 2(4). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As respects Wales, the Welsh Ministers must lay the direction before the National Assembly for Wales: see the Government of Wales Act s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 13 Fisheries Act 1981 s 2(5).

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1056. General powers.

### **1056. General powers.**

The Sea Fish Industry Authority<sup>1</sup> has power to:

- (1) carry out research and development with respect to any matters relating to the sea fish industry<sup>2</sup>;
- (2) give advice in relation to such matters<sup>3</sup>;
- (3) provide training in such matters, or to assist in the provision of such training by making grants or by exercising supervisory or co-ordinating functions<sup>4</sup>;
- (4) promote marketing and consumption in and the export from the United Kingdom of sea fish and sea fish products<sup>5</sup>;
- (5) make loans for assisting persons to meet capital expenditure on constructing, reconditioning or improving fishing vessels or on acquiring, reconditioning or improving plant for making ice or processing sea fish<sup>6</sup>;
- (6) give financial assistance<sup>7</sup> to persons incurring expenditure in forming, carrying on or extending the activities of co-operatives for the sale of sea fish or for the purchase of fishing gear, fuel, stores or other materials requisite for the sea fish industry<sup>8</sup>.

The Authority may charge fees for any services which it provides and may accept voluntary contributions to its expenses or to its expenses in respect of any particular matter<sup>9</sup>. The Authority may provide services for persons concerned with the sea fish industry of countries other than the United Kingdom but may not do so unless, in the case of a country which is not a member state, the full cost of the services is recovered by fees, and the Authority is satisfied that the services can be provided without prejudice to its other activities<sup>10</sup>.

The Authority may enter into such agreements, acquire such property, and dispose of such property, and do all such other things as may in its opinion be necessary or desirable for the exercise of its powers<sup>11</sup>. The Authority also has borrowing powers<sup>12</sup> and the power to impose levies<sup>13</sup>.

1 As to the creation and constitution of the Authority see para 1054 ante.

2 Fisheries Act 1981 s 3(1)(a). For the meaning of 'the sea fish industry' see para 1054 note 7 ante.

3 Ibid s 3(1)(b).

4 Ibid s 3(1)(c). In determining its policy with respect to the provision of training or the making of grants, the Authority must consult with such bodies as may be designated for the purpose by the Secretary of State or the Welsh Ministers; and the Authority may not exercise supervisory or co-ordinating functions without ministerial approval: s 3(3).

5 Ibid s 3(1)(d).

6 Ibid s 3(1)(e). For the meaning of 'sea fish' see para 1054 note 7 ante. The exercise of this power is subject to ministerial approval: see s 3(4).

7 Such financial assistance may be by way of loan, grant or guarantee: see *ibid* s 3(1)(f).

8 Ibid s 3(1)(f). The exercise of this power is subject to ministerial approval: see s 3(4).

9 Ibid s 3(2).

10 Ibid s 3(5) (amended by the Fisheries Act 1981 (Amendment) Regulations 1989 SI 1989/1190, reg 2(3)).

11 Fisheries Act 1981 s 3(7).

12 See *ibid* s 6; and para 1060 post.

13 See *ibid* s 4 (as amended); and para 1057 post.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1057. Power to raise levies.

#### **1057. Power to raise levies.**

For the purpose of financing its activities, the Sea Fish Industry Authority<sup>1</sup> may impose a levy on persons engaged in the sea fish industry<sup>2</sup>. Such a levy is imposed by regulations made by the Authority and confirmed by an order of the Secretary of State or the Welsh Ministers<sup>3</sup>. Regulations may impose a levy either in respect of the weight of sea fish or sea fish products<sup>4</sup> landed<sup>5</sup> in the United Kingdom or trans-shipped within British fishery limits<sup>6</sup> at a prescribed<sup>7</sup> rate which, in the case of sea fish must not exceed 2p per kilogram<sup>8</sup>, or in respect of the value (ascertained in the prescribed manner) of sea fish or sea fish products landed or trans-shipped at a prescribed rate not exceeding 1 per cent of that value<sup>9</sup>. Different rates may be prescribed for sea fish or sea fish products of different descriptions and the Authority may repay the whole or any part of the levy in such circumstances as it may determine, but not so as to discriminate between different persons in the same circumstances<sup>10</sup>. Any levy is payable in such proportions and at such times as may be prescribed<sup>11</sup> and the amount of levy payable is a debt due to the Authority and recoverable accordingly<sup>12</sup>.

At least 28 days before making any regulations, the Authority must publish<sup>13</sup> a notice of its intention to make regulations<sup>14</sup>. The Authority must take into consideration any objection made to it before the end of the period specified in the notice<sup>15</sup>. When submitting the regulations to the Secretary of State or the Welsh Ministers, the Authority must transmit to him or them any objection that has not been withdrawn, and he or they must consider such objection<sup>16</sup>. The regulations are set out in the order confirming them<sup>17</sup>. However, before making such an order, the Secretary of State or the Welsh Ministers may hold inquiries and modify the regulations after consulting with the Authority<sup>18</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

2 Fisheries Act 1981 s 4(1). For the meaning of 'the sea fish industry' see para 1054 note 7 ante.

3 Ibid s 4(2). See the Sea Fish Industry Authority (Levy Powers) Order 1990, SI 1990/1641; the Sea Fish Industry (Levy) Regulations 1995 Confirmatory Order 1996, SI 1996/160; and the Sea Fish Industry (Levy) (Amendment) Regulations 1998 Confirmatory Order 1999, SI 1999/837. As to the requirements imposed by the levy regulations see para 1059 post. The power to make orders is exercisable by statutory instrument: Fisheries Act 1981 s 41 (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 68). An order made by the Secretary of State under the Fisheries Act 1981 s 4 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament, and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 4(9). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State and the Welsh Ministers see the Fisheries Act 1981 s 14(1); and para 846 ante.

4 Parts of fish are treated as sea fish products: *ibid* s 4(8)(a).

5 References to the landing of fish include references to the collection for consumption of sea fish which have been bred, reared or cultivated in the course of fish farming whether in the sea or otherwise; and references to the landing of fish or fish products include references to bringing them through the tunnel system as defined in the Channel Tunnel Act 1987: Fisheries Act 1981 s 4(8)(b) (amended by the Channel Tunnel (Amendment of Fisheries Act 1981) Order 1994, SI 1994/1390, art 2).

6 See para 961 ante. For the meaning of 'United Kingdom' see para 843 note 1 ante.

7 le prescribed by regulations made under the Fisheries Act 1981 s 4 (as amended): s 4(2).

8 Ibid s 4(3)(a), (4) (amended by the Sea Fish Industry Authority (Levy Powers) Order 1990, SI 1990/1641, art 2). The Secretary of State or the Welsh Ministers may by order increase or further increase the rate per kilogram: Fisheries Act 1981 s 4(7).

9 Ibid s 4(3)(b). The Secretary of State or the Welsh Ministers may by order increase or further increase the percentage: s 4(7).

10 Ibid s 4(5).

11 See note 7 supra.

12 Fisheries Act 1981 s 4(6).

13 The notice must be published in the London, Edinburgh and Belfast Gazettes and in such other manner as the Authority thinks best adapted for informing persons affected: *ibid* Sch 2 para 1.

14 Ibid Sch 2 para 1. The notice must specify where the regulations can be inspected and the price of copies and state that the Authority is prepared to receive and consider any objections made in writing within 28 days of the notice being published: Sch 2 para 1(a), (b).

15 Ibid Sch 2 para 1.

16 Ibid Sch 2 para 2.

17 Ibid Sch 2 para 3. As to the orders made see note 3 supra. As to the requirements imposed by the levy regulations see para 1059 post.

18 Ibid Sch 2 para 3. If modifications are made, the Secretary of State or the Welsh Ministers must cause notification of the modifications to be published in such manner as he thinks or they think best adapted for informing persons affected: Sch 2 para 3.

## UPDATE

### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1057 Power to raise levies**

NOTES 2, 9--The Sea Fish Industry Authority (Levy) Regulations 1995, SI 1995/160, are ultra vires the Fisheries Act 1981 s 4, and are contrary to the Treaty of the Functioning of the European Union arts 28, 30, in so far as they impose a levy on imports of sea fish and sea fish products into the United Kingdom: *Bloomsbury International Ltd v Sea Fish Industry Authority* [2010] EWCA Civ 263, [2010] All ER (D) 169 (Mar).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1058. Records and information for levy purposes.

### **1058. Records and information for levy purposes.**

Regulations imposing a sea fish industry levy<sup>1</sup> may require persons engaged in the sea fish industry<sup>2</sup> to keep and preserve such records and to furnish to the Sea Fish Industry Authority<sup>3</sup> such information as may be specified in the regulations<sup>4</sup>. An officer authorised by the Authority may, on producing on demand evidence of his authority, require the production of, and take copies of, any records which a person is required to keep by virtue of the regulations, and for that purpose may at any reasonable time enter premises occupied for the purposes of his business or board any vessel owned or in the possession of a person who is or may be liable to pay the levy<sup>5</sup>. Any person who fails without reasonable excuse to comply with a requirement so imposed<sup>6</sup> or who wilfully obstructs an officer in the exercise of his powers<sup>7</sup> is guilty of an offence<sup>8</sup>. Any person who, in purported compliance with a requirement to furnish information<sup>9</sup>, knowingly makes a record or furnishes any information which is false in a material particular, or knowingly alters a record so that it becomes false, is guilty of an offence<sup>10</sup>.

1      Ie a levy under the Fisheries Act 1981 s 4 (as amended): see para 1057 ante.

2      For the meaning of 'the sea fish industry' see para 1054 note 7 ante.

3      As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

4      Fisheries Act 1981 s 5(1). See para 1057 note 3 ante. As to the requirements imposed by the levy regulations see para 1059 post.

5      Ibid s 5(2).

6      Ibid s 5(3)(a). The requirements in question are those imposed by virtue of s 5(1), (2): see the text and notes 1-5 supra.

7      Ibid s 5(3)(b). The reference is to those powers under s 5(2): see the text and note 2 supra.

8      Ibid s 5(3). A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 5(3) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see para 841 note 4 ante. Where an offence under the Fisheries Act 1981 Pt I, Pt II or Pt IV which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly: s 42.

9      Ie a requirement imposed by virtue of ibid s 5(1).

10     Ibid s 5(4). A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding three months or both: s 5(4) (amended by virtue of the Criminal Justice Act 1982 s 46). As from a day to be appointed, the reference to imprisonment is repealed: see the Fisheries Act 1981 s 5(4) (as so amended; prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

### **UPDATE**

#### **1049-1058 Procedure for making orders as to fisheries for shellfish ... Records and information for levy**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning



of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1059. Levy regulations.

### **1059. Levy regulations.**

A levy must be paid to the Sea Fish Industry Authority<sup>1</sup> by every person engaged in the sea fish industry<sup>2</sup> who purchases or trans-ships within British fishery limits any sea fish or any sea fish product by way of firsthand sale<sup>3</sup>, or lands any sea fish or sea fish product in the United Kingdom for subsequent sale other than in the United Kingdom<sup>4</sup>. Levy is not payable in respect of any live sea fish purchased for cultivation or in respect of canned or bottled sea fish or sea fish products<sup>5</sup>. If any sea fish or any sea fish product is purchased on a firsthand sale through or from a wholesale merchant the levy must be paid to the Authority by the wholesale merchant (who is entitled to recover as a civil debt from the purchaser of such sea fish or sea fish product a sum equal to the amount of the levy which has been paid)<sup>6</sup>.

Levy payable by a person who purchases any sea fish or sea fish product on a firsthand sale must be paid to the Authority within seven days after the end of: (1) the week during which there took place the firsthand sale of the fish or fish product in respect of which the levy is payable; or (2) the week during which such fish or fish product was imported or brought into the country, whichever is the later<sup>7</sup>. Levy payable by a person who trans-ships any sea fish or sea fish product by way of firsthand sale must be paid to the Authority within seven days after the end of the week during which there took place the trans-shipment of the fish or fish product in respect of which the levy is payable<sup>8</sup>. Levy payable by a person who lands any sea fish or sea fish product for subsequent sale other than in the United Kingdom must be paid to the Authority within seven days after the end of the week during which there took place such landing of the fish or sea fish product in respect of which the levy is payable<sup>9</sup>.

Every person engaged in the sea fish industry who sells sea fish or sea fish products otherwise than by retail, or who trans-ships within British fishery limits by way of firsthand sale any sea fish or sea fish products, or who lands any sea fish or sea fish products for sale outside the United Kingdom, must keep or cause to be kept for a period of three years an accurate record of all such purchases, trans-shipments or landings<sup>10</sup>. Every person required to keep such records and who is liable to pay levy must make returns to the Authority on a duly completed form in respect of each transaction so leviable<sup>11</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante. As to the power to make levy regulations see para 1057 ante.

2 For the meaning of 'the sea fish industry' see para 1054 note 7 ante.

3 'Firsthand sale' means: (1) in relation to any sea fish or sea fish product which has been first landed in the United Kingdom the first sale thereof (other than a sale by retail), whether prior to or after landing in the United Kingdom; (2) in relation to any sea fish or sea fish product which has been first landed outside the United Kingdom and any sea fish product manufactured outside the United Kingdom from such sea fish or sea fish product which in either case is purchased by a person carrying on business in the sea fish industry and is imported or brought into the United Kingdom for the purposes of any such business, the first sale thereof (whether in the United Kingdom or elsewhere) to such a person; (3) in relation to any sea fish or sea fish product which is trans-shipped within British fishery limits, the first sale thereof: Sea Fish Industry Authority (Levy) Regulations 1995 Confirmatory Order 1996, SI 1996/160, art 2, Schedule paras 1, 2.

4 Ibid Schedule para 4(1). Where the levy becomes payable by any person in respect of any sea fish or sea fish product trans-shipped within British fishery limits by way of firsthand sale by him, it is not payable by any

person who subsequently purchases such fish or fish product: Schedule para 4(4). Where any sea fish or sea fish product is trans-shipped by way of sale within British fishery limits more than once, the levy is payable in respect of the first such trans-shipment only: Schedule para 4(5). Where the levy becomes payable in respect of any sea fish it is not payable in respect of the products of such sea fish: Schedule para 4(6).

5 Ibid Schedule para 4(2). 'Canned or bottled fish' means fish or sea fish products packed in an hermetically sealed container which is processed to inhibit microbial growth at ambient temperature: Schedule para 2. 'Cultivation' means the rearing and nurturing of sea fish which is carried out over a period of six months or more: Schedule para 2.

6 Ibid Schedule para 4(3). 'Wholesale merchant' means a person selling or offering for sale sea fish or sea fish products otherwise than by retail: Schedule para 2.

7 Ibid Schedule para 5(1). 'Week' means a period of seven consecutive days ending at midnight on any Saturday: Schedule para 2.

8 Ibid Schedule para 5(2).

9 Ibid Schedule para 5(3).

10 Ibid Schedule para 6. These records must include in respect of each purchase, sale, trans-shipment or landing: the date; the name and address of the seller or purchaser or the names of the vessels from which any trans-shipment was made together with their places of registration and registration numbers or the name and address of the person making the landing; the description of sea fish or sea fish product purchased, sold or landed; the net weight of each description of sea fish or sea fish product purchased, sold or landed; the price invoiced; and the place of landing or import: Schedule para 6.

11 Ibid Schedule para 7. Such returns must be made at the same time as a levy is paid: see Schedule para 7.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1060. Borrowing powers.

### **1060. Borrowing powers.**

The Sea Fish Industry Authority<sup>1</sup> may borrow for the purposes of financing its activities<sup>2</sup>. Its borrowing powers must be exercised subject to and in accordance with regulations made by the Secretary of State or the Welsh Ministers<sup>3</sup> with the approval of the Treasury<sup>4</sup>. Unless increased by order by the Secretary of State or the Welsh Ministers<sup>5</sup>, the total sums borrowed by the Authority must not exceed £30 million<sup>6</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

2 Fisheries Act 1981 s 6(1).

3 As to the Secretary of State and the Welsh Ministers see ibid s 14(1); and para 846 ante.

4 Ibid s 6(2). The regulations made are not statutory instruments, and are not noted in this work. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

5 See ibid s 6(4). Such an order is made with the approval of the Treasury and may increase or further increase the borrowing limit by no more than £10 million at a time: s 6(4). An order made by the Secretary of State does not have effect unless approved by a resolution of the House of Commons: s 6(5). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. At the date at which this volume states the law no such order had been made.

6 Fisheries Act 1981 s 6(3). This total is the aggregate of the sums borrowed by the Authority under s 6 and the sums borrowed by another person and guaranteed by the Authority under s 3(1)(f) (see para 1056 ante): see s 6(3).

**UPDATE****1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1061. Government loans and grants.

**1061. Government loans and grants.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may lend to the Sea Fish Industry Authority<sup>2</sup>, on such terms as the Treasury may approve, any sums required to be borrowed by the Authority for a purpose approved by the Secretary of State or Welsh Ministers and the Treasury<sup>3</sup>. The maximum amount outstanding at any time of the sums lent must not exceed £30 million<sup>4</sup>. The Secretary of State and the Welsh Ministers may by order<sup>5</sup> with approval of the Treasury increase or further increase the maximum amount that can be loaned, but by no more than £10 million at a time<sup>6</sup>.

The Secretary of State and the Welsh Ministers may, with the consent of the Treasury, make grants to the Authority on such conditions as he thinks or they think fit<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see the Fisheries Act 1981 s 14(1); and para 846 ante.

2 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

3 Fisheries Act 1981 s 7(1). Sums required for providing financial assistance to the Authority are to be paid out of moneys provided by Parliament: see s 43. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

4 Ibid s 7(2). The total sum borrowed by the Authority, including any borrowing under s 6 (see para 1060 ante), must not exceed £30 million: see s 7(5).

5 Orders made by the Secretary of State have no effect unless approved by a resolution of the House of Commons: ibid s 7(4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Fisheries Act 1981 s 7(3).

7 Ibid s 8. Such grants may only be made in respect of expenses incurred by the Authority in fulfilling a guarantee given under s 3(1)(f) (see para 1056 ante) or in respect of any loss incurred by the Authority by reason of foreign exchange fluctuations when the Authority has borrowed money in one currency and lent in another: s 8(a), (b).

**UPDATE****1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1062. Government guarantees.

### **1062. Government guarantees.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may guarantee in such manner and on such conditions as he thinks or they think fit the repayment of the principal and the payment of interest on any sum which the Sea Fish Industry Authority<sup>2</sup> borrows otherwise than from him or them<sup>3</sup>.

Immediately after giving any such guarantees a statement must be laid before both Houses of Parliament or before the National Assembly for Wales, as the case may be, showing the extent and character of the guarantee and the circumstances in which it came to be given<sup>4</sup>. If any sum is paid by the Secretary of State or the Welsh Ministers in fulfilment of a guarantee, the Authority is from the date of that payment indebted to him or them in the amount of the payment, and a statement must be laid before both Houses of Parliament or before the National Assembly for Wales, as the case may be, showing the amount and the circumstances in which it was made<sup>5</sup>. Where any sum is so paid the Authority must make to the Secretary of State or the Welsh Ministers, at such time and in such manner as he or they from time to time may direct, payments of amounts in or towards repayment of the sum and payment of interest on what is outstanding<sup>6</sup>. The consent of the Treasury is required both for the giving of a guarantee and for any direction for repayment<sup>7</sup>.

1 As to Secretary of State and the Welsh Ministers see the Fisheries Act 1981 s 14(1); and para 846 ante.

2 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

3 Fisheries Act 1981 s 9(1).

4 See *ibid* s 9(2) (s 9(2), (3) amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, arts 3, 5, Sch 23 Pt I, Pt II para 3(1), (2)). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As to the laying of documents before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Fisheries Act 1981 s 9(3) (as amended: see note 4 *supra*). See note 4 *supra*.

6 See *ibid* s 9(4).

7 *Ibid* s 9(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

### **UPDATE**

#### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1063. Investments of reserve funds.

### **1063. Investments of reserve funds.**

Any money of the Sea Fish Industry Authority<sup>1</sup> which is not immediately required for any other purpose may be invested by the Authority in any investments in which trustees may invest under the general statutory power of investment in the Trustee Act 2000<sup>2</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

2 Fisheries Act 1981 s 10 (substituted by the Trustee Act 2000 s 40(1), Sch 2 Pt II para 41). As to the power of investment see the Trustee Act 2000 s 3; and TRUSTS vol 48 (2007 Reissue) para 1012. The power is subject to the restrictions in ss 4, 5 (see TRUSTS vol 48 (2007 Reissue) paras 1013-1014): Fisheries Act 1981 s 10 (as so substituted).

## **UPDATE**

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1064. Accounts and reports.

### **1064. Accounts and reports.**

It is the duty of the Sea Fish Industry Authority<sup>1</sup> to keep proper accounts and records in relation to those accounts and to prepare a statement of account for each financial year, a copy of which must be sent to the Comptroller and Auditor General<sup>2</sup>. The statement of accounts must give a true and fair view of the Authority's affairs at the end of the financial year and of its income and expenditure in the financial year<sup>3</sup>. Separate accounts must be kept in respect of services provided to countries outside the United Kingdom<sup>4</sup>. As soon as possible after the end of the financial year<sup>5</sup> the Authority must prepare and submit to the Secretary of State and the Welsh Ministers a report of its proceedings in that year<sup>6</sup>. Copies of the statement of accounts, the Authority's report and the Comptroller and Auditor General's report must be laid before Parliament and the National Assembly for Wales<sup>7</sup>. The Secretary of State, the Welsh Ministers

and the Comptroller and Auditor General are entitled to inspect all books, papers and other records of the Authority relating to its accounts<sup>8</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

2 Fisheries Act 1981 s 11(1). 'Financial year' means the 12 months ending 31 March in each year: s 14(1). The Comptroller and Auditor General must examine, certify and report on the statement of accounts and lay before Parliament copies of both the statement and his report on it: s 11(6A) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 10(1), (2); and substituted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 3(2), (3)); Fisheries Act 1981 s 11(6B) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 10(1), (2)). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As to the laying of reports etc before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See the Fisheries Act 1981 s 11(2). The Authority must comply with any directions given by the Secretary of State or the Welsh Ministers with the consent of the Treasury as to the information to be included in the statement of accounts, the manner of presentation, or methods and principles according to which the statement is prepared: s 11(2). As to the Secretary of State and the Welsh Ministers see s 14(1); and para 846 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517

4 Ibid s 11(3). As to those services see s 3(5) (as amended); and para 1056 ante.

5 In any event this must be no later than 30 September following the end of that year: see ibid s 11(7).

6 Ibid s 11(7).

7 See ibid s 11(8) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, arts 3, 5, Sch 23 Pt I, Pt II para 3; the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 10(1), (2); and the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 3(2), (3)). See note 2 supra.

8 Fisheries Act 1981 s 11(9) (amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, arts 3, 5, Sch 23 Pt I, Pt II para 3).

## UPDATE

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/ (5) THE SEA FISH INDUSTRY AUTHORITY/1065. Restrictions on disclosure of information.

### **1065. Restrictions on disclosure of information.**

No information with respect to any particular undertaking which has been obtained by or on behalf of the Sea Fish Industry Authority<sup>1</sup> is to be disclosed, without the consent of the person carrying on that undertaking, otherwise than for the purpose of the discharge of the Authority's

functions<sup>2</sup>. However, this restriction does not preclude disclosure of information by or on behalf of the Authority: (1) to the Secretary of State or the Welsh Ministers<sup>3</sup> for the purposes of his or their functions relating to the sea fish industry or to the regulation of sea fishing; or (2) for the purposes of any legal proceedings or of any report of such proceedings<sup>4</sup>.

If a person discloses information in contravention of this statutory restriction, he is guilty of an offence<sup>5</sup>.

1 As to the creation and constitution of the Sea Fish Industry Authority see para 1054 ante.

2 Fisheries Act 1981 s 12(1).

3 As to Secretary of State and the Welsh Ministers see *ibid* s 14(1); and para 846 ante.

4 See *ibid* s 12(2).

5 *Ibid* s 12(3). A person found guilty of an offence will be liable on summary conviction to a fine not exceeding the prescribed sum or a term of imprisonment not exceeding six months or both, and on conviction on indictment to a fine or a term of imprisonment not exceeding two years or both: s 12(3)(a), (b). As to the prescribed sum see s 12(4) (amended by the Fines and Penalties (Northern Ireland) Order 1984, SI 1984/703 (NI 3) art 19(1), Sch 6 para 18); and para 849 note 15 ante. As to offences committed by bodies corporate see para 1058 note 8 ante.

## UPDATE

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(6) FINANCIAL ASSISTANCE FOR THE SEA FISH INDUSTRY/1066. Schemes of financial assistance.

## **(6) FINANCIAL ASSISTANCE FOR THE SEA FISH INDUSTRY**

### **1066. Schemes of financial assistance.**

The Secretary of State and the Welsh Ministers may in accordance with a scheme made by him or them with the approval of the Treasury<sup>1</sup>, make grants or loans for the purpose of re-organising or developing or promoting the sea fish industry<sup>2</sup> or of contributing to the expenses of those engaged in it<sup>3</sup>. A scheme may be limited to a specified part of England or Wales<sup>4</sup>. The Sea Fish Industry Authority is taken to have had power to make such charges as were made by it in the administration of various financial assistance schemes<sup>5</sup>.

1 In relation to a scheme not extending outside England, it is the Secretary of State who may make grants; in relation to a scheme not extending outside Wales, it is the Welsh Ministers, and in relation to a scheme extending to the whole or part of both countries it is both the Secretary of State and the Welsh Ministers (although a scheme may provide for payments under the scheme to be made by either of them): see the Fisheries Act 1981 s 18(1); and the National Assembly For Wales (Transfer of Functions) Order 1999, SI

1999/672, art 2, Sch 1. As to the Secretary of State and the Welsh Ministers see para 846 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

2 For the purposes of the Fisheries Act 1981 Pt II (ss 15-18A) (as amended), 'the sea fish industry' means the sea fish industry in England and Wales and Northern Ireland and a person is to be regarded as engaged in the sea fish industry if: (1) he carries on or is employed in the business of operating vessels for catching or processing sea fish or for transporting sea fish or sea fish products, being vessels registered in the United Kingdom; or (2) he carries on in England and Wales and Northern Ireland, or is employed in England and Wales and Northern Ireland in, the business of selling sea fish or sea fish products by wholesale or retail, of loading, unloading or the inland transport of sea fish or sea fish products, or of processing sea fish (including the business of a fish fryer): s 18(2) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4 Sch 2 para 68).

3 Fisheries Act 1981 s 15(1). In relation to England, such schemes must be laid before Parliament after being made and cease to have effect unless approved by resolution of both Houses of Parliament within 40 days, disregarding for that purpose any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: see s 15(3), (4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162, Sch 11 paras 33-35 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

In exercise of the power in the Fisheries Act 1981 s 15, the following schemes have been made: the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1981, SI 1981/1765 (amended by SI 1984/1769); the Fishing Vessels (Temporary Financial Assistance) Scheme 1982, SI 1982/1686; the Fishing Vessels (Financial Assistance) Scheme 1983, SI 1983/1883; the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1987, SI 1987/1135 (amended by SI 1990/685); the Fishing Vessels (Financial Assistance) Scheme 1987, SI 1987/1136; the Fishing Vessels (Safety Improvements) (Grants) Scheme 1993, SI 1993/1325 (amended by SI 1995/1609); the Fishing Vessels (Safety Improvements) (Grants) Scheme 1995, SI 1995/1609; the Fishing Vessels (Decommissioning) Scheme 1997, SI 1997/1924; the Fishing Vessels (Decommissioning) Scheme 2001, SI 2001/3390; the Fishing Vessels (Decommissioning) Scheme 2003, SI 2003/2669; the Fishing Boats (Satellite-Tracking Devices) (England) Scheme 2004, SI 2004/2467; the Fishing Boats (Satellite-Tracking Devices) (Wales) Scheme 2006, SI 2006/2799; and the Decommissioning of Fishing Vessels Scheme 2007, SI 2007/312. Schemes which extend to Scotland or Northern Ireland only are outside the scope of this work.

Any scheme under the Sea Fish Industry Act 1970 s 49 (repealed) which was in force immediately before the Fisheries Act 1981 came into force, has effect as if made under s 15 (as amended): s 15(5).

4 Ibid s 15(2) (amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4 Sch 2 para 68).

5 Sea Fishing Grants (Charges) Act 2000 s 1(1). As to the Sea Fish Industry Authority see para 1054 et seq ante. The schemes are: the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1976, SI 1976/304; the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1981, SI 1981/1765; the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1987, SI 1987/1135; the Fishing Vessels (Safety Improvements) (Grants) Scheme 1993, SI 1993/1325; and the Fishing Vessels (Safety Improvements) (Grants) Scheme 1995, SI 1995/1609: see the Sea Fishing Grants (Charges) Act 2000 s 1(2). The Act also validates charges made by the former Herring Industry Board in relation to the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1967, SI 1967/372, and the Fishing Vessels (Acquisition and Improvement) (Grants) Scheme 1976, SI 1976/304, which the Sea Fish Industry Authority continues to administer: Sea Fishing Grants (Charges) Act 2000 s 2. The Act does not apply to charges made after 3 May 1996: s 3.

## UPDATE

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(6) FINANCIAL ASSISTANCE FOR THE SEA FISH INDUSTRY/1067. Administration of schemes.

### **1067. Administration of schemes.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may require the Sea Fish Industry Authority<sup>2</sup> to administer a financial assistance scheme<sup>3</sup>, and where the Authority is required to do this it must administer the scheme accordingly and may exercise any discretion vested in the Secretary of State or the Welsh Ministers<sup>4</sup>. The Authority must keep accounts in relation to such a scheme with respect to payments made by or to it and must prepare in respect of each financial year a statement of accounts<sup>5</sup>.

1 See para 1066 note 1 ante. As to the Secretary of State and the Welsh Ministers see para 846 ante.

2 As to Sea Fish Industry Authority see para 1054 et seq ante.

3 Ie a scheme under the Fisheries Act 1981 s 15 (as amended): see para 1066 ante.

4 Ibid s 16(1). These functions must be exercised by members of the Authority appointed under s 1(3) (see para 1054 ante) to the exclusion of the other members: s 16(2).

5 Ibid s 16(3). The accounts are to be prepared as may be directed by the Secretary of State or the Welsh Ministers with the approval of the Treasury: see s 16(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. The Authority must send a copy of the statement of accounts to the Comptroller and Auditor General who must examine, certify and report on each one and lay before Parliament both a copy of the statement and his report: see s 16(5A), (5B) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 10(1), (3); and substituted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004, SI 2004/1715, art 3(2), (4)). As to the laying of documents before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948; and PARLIAMENT vol 34 (Reissue) para 941; STATUTES vol 44(1) (Reissue) para 1515. As respects Wales, a copy of the report must be laid before the National Assembly for Wales: see the Government of Wales Act 2006 s 162, Sch 11 para 36; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

The Secretary of State and the Welsh Ministers are entitled to inspect all books, papers and other records of the Authority relating to the accounts: Fisheries Act 1981 s 16(6).

## **UPDATE**

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(6) FINANCIAL ASSISTANCE FOR THE SEA FISH INDUSTRY/1068. Offences in connection with financial assistance schemes.

### **1068. Offences in connection with financial assistance schemes.**

Any person who:

- (1) in furnishing any information in purported compliance with a requirement imposed by a financial assistance scheme<sup>1</sup> makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular<sup>2</sup>; or
- (2) in purported compliance with a requirement imposed by such a scheme produces a document which he knows to be false in a material particular or recklessly produces a document which is false in a material particular<sup>3</sup>; or
- (3) wilfully refuses to supply any information, make any return, or produce any document when required to do so by or under any such scheme<sup>4</sup>,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>5</sup>.

1 le a scheme made under the Fisheries Act 1981 s 15 (as amended): see para 1066 ante.

2 Ibid s 17(a).

3 Ibid s 17(b).

4 Ibid s 17(c).

5 Ibid s 17 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see para 841 note 4 ante.

## UPDATE

### **1060-1068 Borrowing powers ... Offences in connection with financial assistance schemes**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(6) FINANCIAL ASSISTANCE FOR THE SEA FISH INDUSTRY/1069. The Financial Instrument for Fisheries Guidance and the European Fisheries Fund.

### **1069. The Financial Instrument for Fisheries Guidance and the European Fisheries Fund.**

A fund of Community aid known as the Financial Instrument for Fisheries Guidance ('FIFG') operated from 2000 until 2006<sup>1</sup>. Its aim was to contribute to achieving the objectives of the common fisheries policy<sup>2</sup>, and it supported structural measures in fisheries, aquaculture and the processing and marketing of fishery and aquaculture products<sup>3</sup>. Its aims were specifically: (1) to contribute to achieving a balance between fisheries resources and their exploitation; (2) to strengthen the competitiveness of operating structures and the development of economically viable enterprises in the sector; (3) to improve market supply and the value added to fishery and aquaculture products; and (4) to contribute to revitalising areas dependent on fisheries and aquaculture<sup>4</sup>. In Great Britain grants may be paid by the Secretary

of State or the Welsh Ministers towards the expenditure of specified types of investment projects in the fisheries and aquaculture sector and the industry sector processing and marketing its products which have been approved for the payment of Community aid from the Financial Instrument for Fisheries Guidance<sup>5</sup>.

In 2006 the European Fisheries Fund ('EFF') was set up to replace the FIFG as the new instrument for fisheries programming for the period 2007 to 2013<sup>6</sup>. Its objectives are: (a) to support the common fisheries policy so as to ensure exploitation of living aquatic resources and support aquaculture in order to provide sustainability in economic, environmental and social terms; (b) to promote a sustainable balance between resources and the fishing capacity of the Community fishing fleet; (c) to promote a sustainable development of inland fishing; (d) to strengthen the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector; (e) to foster the protection and the enhancement of the environment and natural resources where related to the fisheries sector; (f) to encourage sustainable development and the improvement of the quality of life in areas with activities in the fisheries sector; (g) to promote equality between men and women in the development of the fisheries sector and fisheries areas<sup>7</sup>.

1 See EC Council Regulation 1263/1999 (OJ L161, 26.6.1999, p 54) on the Financial Instrument for Fisheries Guidance.

2 See para 796 ante.

3 See EC Council Regulation 1263/1999 (OJ L161, 26.6.1999, p 54) art 1.

4 See ibid art 2.

5 See the Fisheries and Aquaculture Structures (Grants) Regulations 1995, SI 1995/1576; the Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001, SI 2001/1117; and the Fisheries and Aquaculture Structures (Grants) (Wales) Regulations 2002, SI 2002/675. See also the Fish Producers' Organisations (Formation Grants) Regulations 1999, SI 1999/1110, which enable the Secretary of State or the Welsh Ministers to pay to a recognised fish or aquaculture producers' organisation an annual grant in respect of the administrative expenses incurred on its formation and during its operation for a period of three years following the date on which that organisation was recognised. As to the Secretary of State and the Welsh Ministers see para 846 ante.

6 See EC Council Regulation 1198/2006 (OJ L223, 15.8.2006, p 1) on the European Fisheries Fund.

7 Ibid art 4.

## UPDATE

### **1069 The Financial Instrument for Fisheries Guidance and the European Fisheries Fund**

NOTES 5, 6--As to grants in relation to the European Fisheries Fund, see the Grants for Fishing and Aquaculture Industries Regulations 2007, SI 2007/3284 (amended by SI 2009/1309); and the European Fisheries Fund (Grants) (Wales) Regulations 2009, SI 2009/360. SI 2001/1117 amended: SI 2008/1322.

NOTE 6--For detailed rules implementing EC Council Regulation 1198/2006, see EC Commission Regulation 498/2007 (OJ L120, 10.5.2007, p 1).

## **(7) WHALING AND SEALING**

### **(i) Introduction**

#### **1070. Application of the legislation.**

The legislation governing the hunting of whales<sup>1</sup> and seals<sup>2</sup> has not been repealed. However, the United Kingdom government supports the International Whaling Commission's moratorium on commercial whaling that has existed since 1985 and opposes all forms of whaling, other than limited aboriginal subsistence whaling when there is a traditional and nutritional need for whaling and whale meat<sup>3</sup>. In the current climate it seems unlikely that further licences for whaling and sealing will be granted in the United Kingdom.

1 See para 1071 et seq post.

2 See para 1089 et seq post.

3 See the Department of Environment, Food and Rural Affairs publication *Protecting Whales: A Global Responsibility* (January 2007).

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/A. PROPERTY IN WHALES/1071. Ownership of whales in territorial waters.

### **(ii) Whales**

#### **A. PROPERTY IN WHALES**

##### **1071. Ownership of whales in territorial waters.**

All whales taken within the territorial waters<sup>1</sup> of the kingdom or stranded on the shore are treated as royal fish and belong to the Sovereign in right of the Crown except when taken in places where the Crown has granted out its right in this respect, in which case they belong to the Crown's grantees; the captors of whales within the limits of the territorial waters do not acquire any property in them<sup>2</sup>.

1 As to territorial waters see paras 961, 964 note 3 ante.

2 Statute Prerogativa Regis (temp incert) c 13. The same law applies to sturgeon captured within the kingdom: see para 807 ante; and CROWN PROPERTY vol 12(1) (Reissue) para 229. As to the Crown's rights in respect of the waters on the coast beyond the low-water mark see *R v Keyn* (1876) 2 ExD 63, CCR; and WATER AND WATERWAYS vol 100 (2009) PARA 32. The taking of certain species of whale within coastal waters is illegal: see para 1077 post.

Although whales are mammals and not fish, English law has historically treated them as if they were fish, and they are therefore considered in this title.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/A. PROPERTY IN WHALES/1072. Ownership of whales in extra-territorial waters.

### **1072. Ownership of whales in extra-territorial waters.**

In the absence of special customs recognised at the place of capture, the law as to the property in whales captured beyond the territorial waters of the kingdom is the same as that relating to other animals in a wild state<sup>1</sup>. They belong to the first person engaged in their pursuit so long as he continues the pursuit with a reasonable prospect of success, and other persons, by interfering in the chase, acquire no interest in the carcase<sup>2</sup>.

<sup>1</sup> See ANIMALS vol 2 (2008) PARAS 710-711, 715, 737-738. As to territorial waters see paras 961, 964 note 3 ante.

<sup>2</sup> See para 1073 post; and CROWN PROPERTY vol 12(1) (Reissue) para 229.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/A. PROPERTY IN WHALES/1073. Customs of the whaling industry.

### **1073. Customs of the whaling industry.**

The property in whales is governed by conventional rules or local customs in particular localities<sup>1</sup>. In the Greenland whale fishery, for example, the rule of 'fast and loose' applies. A whale is said to be a 'fast fish' at any time while a harpoon remains in it and the line continues attached to it and remains in the striker's power or management<sup>2</sup>, or where the harpoon does not remain in the body of the whale but the whale is attached to the boat of the first striker by any means, such as the entanglement of the line round it<sup>3</sup>. If, while the whale is a fast fish, it is struck by a harpoon from another ship, the second harpoon is called a 'friendly harpoon' and the whale remains the property of the first striker, even though it subsequently frees itself from the first harpoon and remains fast to the second<sup>4</sup>. Similarly, if, while the whale remains fast to the harpoon of the first striker, another, unsolicited, so disturbs the whale that it breaks from the first harpoon, the property remains in the first striker even though the second striker afterwards secures it<sup>5</sup>. But if the first harpoon or line breaks, or the line attached to the first harpoon is not in the striker's power, the whale is a 'loose fish' and will become the property of any other person who strikes and obtains it<sup>6</sup>. A whale is not in the striker's power if his line runs out and he attaches the end of the line to a 'drog' or buoy which he throws overboard<sup>7</sup>; but in the southern whale fishery among the Galapagos Islands, this part of the 'fast and loose' rule is subject to a modification whereby the person who first struck the whale with a harpoon and drog is entitled to one-half of the proceeds from the person who kills it<sup>8</sup>.

<sup>1</sup> These customs, when proved, are upheld by the English courts as having the force of law: *Aberdeen Arctic Co v Sutter* (1862) 6 LT 229, HL; *Littledale v Scaith* (1788) 1 Taunt 243n; *Fennings v Lord Grenville* (1808) 1 Taunt 241; *Hogarth v Jackson* (1827) Mood & M 58; *Skinner v Chapman* (1827) Mood & M 59n. As to the upholding of a custom of the New Zealand whale fishery see *Baldick v Jackson* (1910) 30 NZLR 343. A Scottish court has refused to uphold a custom which was held to be unreasonable: *Bruce v Smith* (1890) 17 R 1000, Ct of Sess.

<sup>2</sup> *Littledale v Scaith* (1788) 1 Taunt 243n.

<sup>3</sup> *Hogarth v Jackson* (1827) Mood & M 58; *Hutchinson v Dundee Whale Fishery Co* (1830) 5 Murr 162.

- 4 *Littledale v Scaith* (1788) 1 Taunt 243n.
- 5 *Skinner v Chapman* (1827) Mood & M 59n.
- 6 *Littledale v Scaith* (1788) 1 Taunt 243n; *Fennings v Lord Grenville* (1808) 1 Taunt 241.
- 7 *Aberdeen Arctic Co v Sutter* (1862) 6 LT 229, HL.
- 8 *Fennings v Lord Grenville* (1808) 1 Taunt 241.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/B. WHALING INDUSTRY LEGISLATION/1074. International whaling conventions.

## **B. WHALING INDUSTRY LEGISLATION**

### **1074. International whaling conventions.**

A series of international conventions and agreements have had as their object the conservation of whale stocks in waters in all parts of the world<sup>1</sup>. A permanent International Whaling Commission has been established which meets from time to time and which is empowered to make regulations varying, in effect, the provisions of the conventions<sup>2</sup>. International regulation of whale fisheries is effected by licensing systems, by prescriptions of close seasons, by total bans on the taking of certain species, by prohibition of the taking of immature specimens or females, and by strict control of the total numbers of whales killed and processed by whaling ships and whale-oil factories respectively<sup>3</sup>.

1 The first international convention relating to the conservation of whales was the Convention for the Regulation of Whaling (Geneva, 24 September 1931; TS 33 (1934); Cmd 4751), which arose out of a conference convened by the League of Nations. It was replaced by the International Agreement for the Regulation of Whaling (London, 8 June 1937; TS 37 (1938); Cmd 5757), which was amended and supplemented by a large number of protocols: (1) London, 24 June 1938; TS 18 (1939); Cmd 5993; (2) London, 7 February 1944; TS 61 (1946); Cmd 6990; (3) London, 5 October 1945; TS 44 (1946); Cmd 6941; (4) London, 26 November 1945; TS 70 (1946); Cmd 7009; (5) London, 15 March 1946; TS 44 (1946); Cmd 6941; (6) Washington, 2 December 1946; TS 14 (1948); Cmd 7354; and (7) London, 3 March 1947; TS 28 (1947); Cmd 7107.

After the 1939-45 war the agreement of 1937 was replaced by the International Convention for the Regulation of Whaling (Washington, 2 December 1946; TS 5 (1949); Cmd 7604), which, among other things, established the International Whaling Commission. It came into force in 1949, when the United Kingdom withdrew from the agreement of 1937. It has been amended by a number of cumulative protocols and has been Reissued as Cmd 9372. It was supplemented by the Arrangements for the Regulation of Antarctic Pelagic Whaling (London, 6 June 1962; TS 89 (1963); Cmd 2210). As to sea fisheries conventions see para 960 ante.

2 See note 1 supra.

3 For statutory provisions giving effect to the conventions see paras 1075, 1077 et seq post. As to the effect of conventions on English law see para 960 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 801; INTERNATIONAL RELATIONS LAW.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/B. WHALING INDUSTRY LEGISLATION/1075. The statutes and subordinate legislation.

## 1075. The statutes and subordinate legislation.

Legal effect was given to the Convention for the Regulation of Whaling<sup>1</sup> by the Whaling Industry (Regulation) Act 1934. The statutes now in force are the Whaling Industry (Regulation) Acts 1934 and 1938<sup>2</sup>. This legislation provides for the protection of certain classes of whale<sup>3</sup>, as well as for the prohibition of catching or treating whales, and imposes a system of licensing<sup>4</sup>. Much of the detailed provision for the protection of whales and for licensing is contained in subordinate legislation<sup>5</sup>.

Protection is afforded to all native mammals in the Antarctic<sup>6</sup>.

1       Ie the Convention for the Regulation of Whaling (Geneva, 24 September 1931; TS 33 (1934); Cmd 4751); see para 1074 note 1 ante.

2       Ie the Whaling Industry (Regulation) Act 1934 and the Sea Fish Industry Act 1938 Pt III (ss 43-46), which may be cited together as the Whaling Industry (Regulation) Acts 1934 and 1938: Sea Fish Industry Act 1938 s 46.

3       The Whaling Industry (Regulation) Act 1934 applies to all cetaceans (ie mammals of the order cetacea which includes whales, dolphins and porpoises): s 1(1) (s 1 substituted by the Fisheries Act 1981 s 35(2)). In their application to a ship registered in or licensed under the law of a colony, the Whaling Industry (Regulation) Act 1934 ss 3-6 (all as amended) (see para 1078 et seq post) have effect as if references to whales were references only to the following cetaceans, that is to say: (1) whales known as whalebone whales or baleen whales; and (2) whales known as sperm whales, spermacet whales, cachalots or pot whales; but Her Majesty may by Order in Council direct that those references are also to include references to all other cetaceans or to any description of other cetaceans specified in the order: s 1(2) (as so substituted; and amended by the Statute Law (Repeals) Act 1989). Such an order may provide that in its application by virtue of the order the Whaling Industry (Regulation) Act 1934 is to have effect with such exceptions, adaptations or modifications as may be specified in the order; and any such order may be limited so as to apply only in relation to one or more colonies specified in the order: s 1(3) (as so substituted; and amended by the Statute Law (Repeals) Act 1989). Neither the Whaling Industry (Regulation) Act 1934 s 1(1) (as substituted) nor s 1(2) (as substituted and amended) is to be construed as extending, or enabling an order to extend, to other cetaceans so much of s 3 (as amended) (see para 1078 post) as is expressed to apply only to right whales, grey whales, blue whales or fin whales (see para 1078 post): s 1(4) (as so substituted).

Any Order in Council under the Whaling Industry (Regulation) Act 1934 may be varied or revoked by a subsequent Order in Council: s 18(3).

4       As to the prohibition on catching or treating whales see para 1078 post. As to licensing see para 1080 et seq post.

5       See the Whaling Industry (Ship) Regulations 1955, SI 1955/1973 (as amended); and para 1081 et seq post.

6       See the Antarctic Act 1994 s 7; and ANIMALS vol 2 (2008) PARA 991.

## UPDATE

### 1075-1078 The statutes and subordinate legislation ... Protection of certain classes of whales

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/B. WHALING INDUSTRY LEGISLATION/1076. Territorial scope of legislation.

### **1076. Territorial scope of legislation.**

Some provisions of the Whaling Industry (Regulation) Act 1934 have extra-territorial effect<sup>1</sup>. In addition Her Majesty may by Order in Council direct that any provision of the Whaling Industry (Regulation) Act 1934 which is expressed to apply only to British ships<sup>2</sup> is to apply to other ships<sup>3</sup> registered in or licensed under the law of any colony<sup>4</sup>, subject to such exceptions, adaptations or modifications, if any, as may be specified in the order<sup>5</sup>; and that the statutory provisions<sup>6</sup> are to extend to the Isle of Man, any of the Channel Islands<sup>7</sup> or any colony, subject to such exceptions, adaptations or modifications, if any, as may be specified in the order<sup>8</sup>. She may similarly direct that, subject to such conditions, if any, as may be specified in the order, any of the statutory provisions which restrict the taking or killing of whales or the use of ships<sup>9</sup> is not to apply in relation to anything done within the coastal waters<sup>10</sup> of certain states<sup>11</sup>, if there is in force as respects those waters a provision of the local law which appears substantially to correspond with the relevant provision<sup>12</sup>.

1 See eg the Whaling Industry (Regulation) Act 1934 ss 3, 4 (both as amended); and paras 1078, 1080 post.

2 See para 1078 note 2 post.

3 'Ship' includes every description of vessel used in navigation: Merchant Shipping Act 1995 s 313(1); definition applied by the Whaling Industry (Regulation) Act 1934 s 17(1) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13). As to the other ships to which the provisions of the Whaling Industry (Regulation) Act 1934 have been extended see the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1936, SI 1936/716 (amended by SI 1938/1603; SI 1939/1896; SI 1941/790).

4 As to the colonies see COMMONWEALTH vol 13 (2009) PARA 705.

5 Whaling Industry (Regulation) Act 1934 s 11 (amended by the Statute Law (Repeals) Act 1989).

6 Ie the provisions of the Whaling Industry (Regulation) Act 1934.

7 See para 843 note 1 ante.

8 Whaling Industry (Regulation) Act 1934 s 13(1) (amended by the Statute Law (Repeals) Act 1989). The Foreign Jurisdiction Act 1890 s 5 permits certain Acts to be extended by Order in Council to foreign countries in which for the time being Her Majesty has jurisdiction. The provisions of the Whaling Industry (Regulation) Act 1934 have been extended to certain territories with exemptions in favour of aborigines dwelling on the coasts of those possessions: see the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1936, SI 1936/716, art 2, Sch 1 (as amended: see note 3 supra); and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1941, SI 1941/790. Provisions capable of being extended under the Whaling Industry (Regulation) Act 1934 s 13 (as amended) to the specified territories include the provisions of the Fisheries Act 1981 s 35: s 46(7).

9 Ie any of the provisions of the Whaling Industry (Regulation) Act 1934 ss 1-11 (as amended) which impose such restrictions: see para 1077 et seq post.

10 'Coastal waters' means: (1) in relation to the United Kingdom, the Channel Islands and the Isle of Man, so much of the waters adjoining those countries respectively as is within British fishery limits (see para 961 ante); and (2) in relation to any other country, so much of the waters adjoining that country as is within the distance to which provisions of the law of that country corresponding to the provisions of the Whaling Industry (Regulation) Act 1934 extend: s 17(1) (definition substituted by the Fishery Limits Act 1964 s 3(3), Sch 1; and amended by the Fishery Limits Act 1976 s 9(1), Sch 2 para 11). For the meaning of 'United Kingdom' see para 843 note 1 ante.

11 Ie the coastal waters of a country or part of Her Majesty's dominions to which the Whaling Industry (Regulation) Act 1934 may be extended by s 13 (as amended) (see the text and notes 6-8 supra): s 12(a). As to Her Majesty's dominions see COMMONWEALTH vol 13 (2009) PARA 707.



12 Ibid s 12 (amended by the Statute Law (Repeals) Act 1989). The provisions of the Whaling Industry (Regulation) Act 1934 ss 3, 4 (both as amended) (see paras 1078, 1080 post) do not apply in relation to the coastal waters of certain territories: see the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1936, SI 1936/716, art 3, Sch 2. For the purposes of the Whaling Industry (Regulation) Act 1934 s 12 (as amended) any provision of the local law may be treated as substantially corresponding to a provision of that Act if it substantially corresponds to that provision with or without any amendment made by or by virtue of the Fisheries Act 1981 s 35: s 35(8).

## **UPDATE**

### **1075-1078 The statutes and subordinate legislation ... Protection of certain classes of whales**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1076 Territorial scope of legislation**

NOTES--In relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea, any competent authority having functions relevant to marine conservation under the Whaling Industry (Regulation) Act 1934 must exercise those functions so as to secure compliance with the requirements of EC Council Directive 79/409 on the conservation of wild birds and EC Council Directive 92/43 on the conservation of natural habitats and of wild flora and fauna: see the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 6. As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

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## ***C. REGULATION OF THE WHALING INDUSTRY***

### **(A) RESTRICTIONS ON THE TAKING OR KILLING OF WHALES**

#### **1077. Prohibition on taking whales within United Kingdom waters.**

Except under the authorisation of a special permit<sup>1</sup>, it is unlawful for any ship<sup>2</sup> to be used within the coastal waters<sup>3</sup> of the United Kingdom<sup>4</sup> for taking or treating whales<sup>5</sup>, and if any ship is so used the master<sup>6</sup> is liable to a fine<sup>7</sup>.

1 As to permits to take and treat whales for scientific purposes see para 1085 post.

2 For the meaning of 'ship' see para 1076 note 3 ante.

3 For the meaning of 'coastal waters' see para 1076 note 10 ante.

4 For the meaning of 'United Kingdom' see para 843 note 1 ante.

5 As to the whales which are subject to the Whaling Industry (Regulation) Act 1934 see para 1075 note 3 ante. As to the classification of whales see para 1078 notes 5-6 post.

6 'Master' includes the person for the time being in command or charge of the ship and, in relation to a ship used for treating whales, includes the person for the time being in charge of the operations on board in connection with such treatment: *ibid* s 17(1).

7 *Ibid* s 2 (amended by the Fisheries Act 1981 s 35(3)). On summary conviction the master is liable to a fine not exceeding £50,000 and on conviction on indictment he is liable to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 2 (as so amended). As to proceedings see para 1088 post.

## UPDATE

### 1075-1078 The statutes and subordinate legislation ... Protection of certain classes of whales

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/C. REGULATION OF THE WHALING INDUSTRY/(A) Restrictions on the Taking or Killing of Whales/1078. Protection of certain classes of whales.

### 1078. Protection of certain classes of whales.

Except under the authorisation of a special permit<sup>1</sup>, it is an offence for any person belonging to a British ship to which the Whaling Industry (Regulation) Act 1934 applies<sup>2</sup>, while outside the coastal waters<sup>3</sup> of the United Kingdom<sup>4</sup>, to kill or take or attempt to kill or take a right whale<sup>5</sup> or a grey whale<sup>6</sup> or an immature whale<sup>7</sup> or a female whale which is accompanied by a calf<sup>8</sup>. On contravention that person and the master<sup>9</sup>, and the owner and charterer (if any) of the ship<sup>10</sup>, is each liable to a fine<sup>11</sup>.

1 As to special permits to take and treat whales for scientific purposes see para 1085 post.

2 'British ship to which the Whaling Industry (Regulation) Act 1934 applies' means a British ship which is not registered in: (1) Canada, Australia, New Zealand or the Republic of Ireland; (2) a territory administered by the government of any of those countries; or (3) India: s 17(1) (definition amended by the South Africa Act 1962 s 2(3), Sch 5; and the Burma Independence Act 1947 s 5, Sch 2); Ireland Act 1949 s 1(3). It does not include a British ship registered in the Bahamas (see the Bahamas Independence Act 1973 s 4(3), (4), Sch 2 para 7), Bangladesh (see the Bangladesh Act 1973 s 1(3), (4), Schedule para 8), Barbados (see the Barbados Independence Act 1966 s 4(5), Sch 2 para 10), Belize (see the Belize Act 1981 s 3(4), Sch 2 para 5), Brunei and Maldives (see the Brunei and Maldives Act 1985 s 1, Schedule para 2), Fiji (see the Fiji Independence Act 1970 s 4(4), Sch 2 para 8), the Gambia (see the Gambia Independence Act 1964 s 4(4), Sch 2 para 10), Ghana (see the Ghana Independence Act 1957 s 4(4), Sch 2 para 11), Guyana (see the Guyana Independence Act 1966 s 5(4), Sch 2 para 10), Jamaica (see the Jamaica Independence Act 1962 s 3(5), Sch 2 para 11), Kenya (see the Kenya Independence Act 1963 s 4(4), Sch 2 para 11), Kiribati (see the Kiribati Act 1979 s 3, Schedule para 6), Malawi (see the Malawi Independence Act 1964 s 4(4), Sch 2 para 11), Malaysia (see the Federation of Malaya Independence Act 1957 s 2(1), Sch 1 para 13; and the Malaysia Act 1963 s 3(2), Sch 2 para 1(a)), Malta (see the Malta Independence Act 1964 s 4(4), Sch 2 para 11), Mauritius (see the Mauritius Independence Act 1968 s 4(3),

Sch 2 para 10), Namibia (see the Namibia Act 1991 s 1, Schedule para 6), Nigeria (see the Nigeria Independence Act 1960 s 3(4), Sch 2 para 11), Pakistan (see the Pakistan Act 1991 s 1, Schedule para 7), Papua New Guinea, Western Samoa or Nauru (see the Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980 s 3, Schedule para 8), Seychelles (see the Seychelles Act 1976 s 7(1), Schedule para 7), Sierra Leone (see the Sierra Leone Independence Act 1961 s 3(3), Sch 3 para 12), Solomon Islands (see the Solomon Islands Act 1978 s 7(4), Schedule para 5), Sri Lanka (see the Ceylon Independence Act 1947 s 4(1), Sch 2 para 8; and the Sri Lanka Republic Act 1972 s 1(4)), Tanzania (see the Tanzania Act 1969 s 3(2)), Trinidad and Tobago (see the Trinidad and Tobago Independence Act 1962 s 3(4), Sch 2 para 11), Tuvalu (see the Tuvalu Act 1978 s 4(3), Sch 2 para 5), Uganda (see the Uganda Independence Act 1962 s 3(4), Sch 3 para 11) and Vanuatu (see the New Hebrides Act 1980 s 2(1), Sch 1 para 6).

The Whaling Industry (Regulation) Act 1934 has, however, been extended to ships registered in certain British territories: see s 13 (as amended); and para 1076 text and note 8 ante. For the meaning of 'ship' see para 1076 note 3 ante.

3 For the meaning of 'coastal waters' see para 1076 note 10 ante.

4 For the meaning of 'United Kingdom' see para 843 note 1 ante.

5 For these purposes, 'right whale' means a whale known by any of these names: Atlantic right whale, Arctic right whale, Biscayan right whale, Bowhead, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, Pigmy right whale, Southern pigmy right whale, and Southern right whale: Whaling Industry (Regulation) Act 1934 s 3(3)(b), Schedule Pt I.

6 For these purposes, 'grey whale' means a whale known by any of these names: California grey, Devil fish, Grey back, Grey whale, Hard head, Mussel digger, and Rip sack: *ibid* s 3(3)(e), Schedule Pt IV (added by the Sea Fish Industry Act 1938 s 43).

7 A whale of any description is deemed to be immature if it is of less than such length as may be prescribed in relation to whales of that description: Whaling Industry (Regulation) Act 1934 s 3(2). 'Prescribed' means prescribed by regulations of the licensing authority (see para 1081 note 6 post): s 17(1). As to the regulations which have been made under this provision see para 1079 post. As to the minimum length permitted to be prescribed in relation to blue whales and fin whales see s 3(2) proviso; and para 1079 notes 5, 6 post.

8 *Ibid* s 3(1) (amended by the Sea Fish Industry Act 1938 s 43). 'Calf' includes a suckling whale: Whaling Industry (Regulation) Act 1934 s 3(3)(a).

9 For the meaning of 'master' see para 1077 note 6 ante.

10 As to the defence available to the owner or charterer in legal proceedings see para 1088 post.

11 Whaling Industry (Regulation) Act 1934 s 3(1) (amended by the Fisheries Act 1981 s 35(3)). On summary conviction the guilty party is liable to a fine not exceeding £50,000, and on conviction on indictment he is liable to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 3(1) (as so amended).

## UPDATE

### 1075-1078 The statutes and subordinate legislation ... Protection of certain classes of whales

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/(ii) Whales/C. REGULATION OF THE WHALING INDUSTRY/(A) Restrictions on the Taking or Killing of Whales/1079. Immature whales.

### 1079. Immature whales.

For the purposes of the statutory provisions prohibiting the killing or taking of immature whales outside the coastal waters of the United Kingdom<sup>1</sup>, regulations prescribe different lengths for different descriptions of whales<sup>2</sup>. Whales are deemed to be immature if, when measured from the point of the upper jaw to the notch between the flukes of the tail<sup>3</sup>, they are less than the following lengths<sup>4</sup>: blue whales, 70 feet<sup>5</sup>; fin whales, 55 feet in the northern hemisphere and 57 feet in the southern hemisphere<sup>6</sup>; sei whales, 40 feet<sup>7</sup>; humpback whales, 35 feet<sup>8</sup>; sperm whales, 38 feet<sup>9</sup>. However, where blue whales, fin whales or sei whales are taken for delivery to a land station and their meat is intended to be used for local consumption as human or animal food the relevant lengths are<sup>10</sup>: blue whales, 65 feet<sup>11</sup>; fin whales, 50 feet in the northern hemisphere and 55 feet in the southern hemisphere<sup>12</sup>; sei whales, 35 feet<sup>13</sup>. Where sperm whales are taken for delivery to a land station, the relevant length is 35 feet<sup>14</sup>.

1 For the purposes of the Whaling Industry (Regulation) Act 1934 s 3 (as amended): see para 1078 ante.

2 See the Whaling Industry (Ship) Regulations 1955, SI 1955/1973 (amended by SI 1958/2042; SI 1959/2054; SI 1960/547; SI 1961/2336). As to the power to make these regulations see para 1078 note 7 ante. The approximate metric equivalents of the lengths specified below are: 70 feet: 21.3 metres; 65 feet: 19.8 metres; 60 feet: 18.3 metres; 57 feet: 17.4 metres; 55 feet: 16.8 metres; 50 feet: 15.2 metres; 40 feet: 12.2 metres; 38 feet: 11.6 metres; and 35 feet: 10.7 metres.

3 As to the detailed provisions for taking measurements see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 2(2). As to the power to prescribe the manner in which the lengths are to be measured see the Whaling Industry (Regulation) Act 1934 s 18(1).

4 See the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 2(1).

5 Ibid reg 2(1)(a). 'Blue whale' means a whale known by any of these names: Blue whale, Sibbald's rorqual, or Sulphur bottom: reg 1(2); and see the Whaling Industry (Regulation) Act 1934 s 3(3)(c), Schedule Pt II. The minimum length which may be prescribed in relation to blue whales is 60 feet: s 3(2) proviso.

6 Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 2(1)(b). 'Fin whale' means a whale known by any of these names: common finback, common finner, common rorqual, finback, fin whale, herring whale, razorback, or true fin whale: reg 1(2); and see the Whaling Industry (Regulation) Act 1934 s 3(3)(d), Schedule Pt III. The minimum length which may be prescribed in relation to fin whales is 50 feet: s 3(2) proviso.

7 Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 2(1)(c). 'Sei whale' means any whale known by any of these names: sei whale, Rudolphi's rorqual, pollack whale or coalfish whale, and includes Bryde's whale: reg 1(2).

8 Ibid reg 2(1)(d). 'Humpback whale' means any whale known by any of these names: bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchbacked whale: reg 1(2).

9 Ibid reg 2(1)(e). For the meaning of 'sperm whale' see reg 1(2); and para 1075 note 3 ante.

10 Ibid reg 2(1) proviso. 'Land station' means a factory on land: reg 1(2).

11 Ibid reg 2(1) proviso (a).

12 Ibid reg 2(1) proviso (b).

13 Ibid reg 2(1) proviso (c).

14 Ibid reg 2(1) further proviso. As to penalties for killing or taking the protected whales see para 1078 ante.

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## (B) LICENSING

### **1080. Licences for whaling ships and whale-oil factories.**

Except under the authorisation of a special permit<sup>1</sup>, it is unlawful for any British ship to which the Whaling Industry (Regulation) Act 1934 applies<sup>2</sup> to be used outside the coastal waters<sup>3</sup> of the United Kingdom<sup>4</sup> for taking or treating whales<sup>5</sup> or for any factory<sup>6</sup> situate in Great Britain<sup>7</sup> to be used for treating whales unless the owner or the charterer of the ship<sup>8</sup> or the occupier of the factory is the holder of a licence in force<sup>9</sup> authorising that use<sup>10</sup>. If any ship or factory is so used in contravention of this provision, the master<sup>11</sup>, the owner and the charterer, if any, of the ship, or the manager or occupier of the factory, as the case may be, is each liable to a fine in respect of each whale taken or treated<sup>12</sup>.

1 As to special permits to take and treat whales for scientific purposes see para 1085 post.

2 For the meaning of 'British ship to which the Whaling Industry (Regulation) Act 1934 applies' see para 1078 note 2 ante.

3 For the meaning of 'coastal waters' see para 1076 note 10 ante.

4 For the meaning of 'United Kingdom' see para 843 note 1 ante.

5 As to the whales to which the Whaling Industry (Regulation) Act 1934 applies see para 1075 note 3 ante.

6 'Factory' does not include a ship: *ibid* s 17(1).

7 For the meaning of 'Great Britain' see para 843 note 1 ante.

8 For the meaning of 'ship' see para 1076 note 3 ante.

9 Ie a licence in force under the Whaling Industry (Regulation) Act 1934.

10 *Ibid* s 4(1). This is expressed to be without prejudice to s 3 (as amended) (see para 1078 ante).

11 As to the meaning of 'master' see para 1077 note 6 ante.

12 Whaling Industry (Regulation) Act 1934 s 4(2) (amended by the Fisheries Act 1981 s 35(3)). The guilty person is liable on summary conviction to a fine not exceeding £50,000, or on conviction on indictment to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 4(2) (as so amended). Section 4(2) (as amended) is expressed to be without prejudice to the subsequent provisions of the Act so far as concerns the owner, charterer or occupier. As to the defences available, and as to legal proceedings generally see para 1088 post.

## **UPDATE**

### **1080-1081 Licences for whaling ships and whale-oil factories, Applications for licences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1081. Applications for licences.**

On application made in the prescribed manner<sup>1</sup> by the owner or charterer of any British ship to which the Whaling Industry (Regulation) Act 1934 applies<sup>2</sup>, or by the occupier of any factory<sup>3</sup> situate in Great Britain<sup>4</sup>, and on payment of the prescribed fee<sup>5</sup>, the licensing authority<sup>6</sup> must grant<sup>7</sup> to the applicant a licence in the prescribed form<sup>8</sup> authorising that ship or factory to be used for taking or for treating whales, as the case may require<sup>9</sup>.

A licence granted under these provisions<sup>10</sup> continues in force, unless previously cancelled, for one year from its commencement date<sup>11</sup> or for such shorter period beginning on the commencement date as may be specified in the licence<sup>12</sup>. Different fees may be charged in respect of the grant of licences for different periods<sup>13</sup>.

The licensing authority may refuse to grant a licence in respect of a ship or factory until it is satisfied, from an inspection of the ship or factory or by such other evidence as it may require, that any condition affecting the structure or equipment of the ship or factory<sup>14</sup> which it is proposed to attach to the licence has been complied with<sup>15</sup>. The licensing authority may also, if it thinks fit, refuse to grant a licence to any person who has been convicted of an offence under the Whaling Industry (Regulation) Act 1934<sup>16</sup>.

1 For the meaning of 'prescribed' see para 1078 note 7 ante. Any application for a licence in respect of a ship must be made in writing by the ship's owners or charterers and must be sent with the licence fee to the Department for Environment, Food and Rural Affairs: Whaling Industry (Ship) Regulation 1955, SI 1955/1973, reg 3; Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. At the date at which this volume states the law, no manner of application had been prescribed in respect of licences for factories for treating whales.

2 For the meaning of 'British ship to which the Whaling Industry (Regulation) Act 1934 applies' see para 1078 note 2 ante. For the meaning of 'ship' see para 1076 note 3 ante.

3 As to the meaning of 'factory' see para 1080 note 6 ante.

4 For the meaning of 'Great Britain' see para 843 note 1 ante.

5 The fees to be paid in respect of the granting of licences for the use of ships are: (1) in the case of a licence authorising the use of a ship for treating whales the sum of £200; and (2) in the case of a licence authorising the use of a ship for taking whales the sum of £75: Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 4(a), (b). As to variations of these fees in special circumstances see reg 4 proviso (i), (ii). The maximum fee which may be prescribed for a licence authorising the use of a ship or factory for treating whales is £200, and for the use of a ship for taking whales it is £100: Whaling Industry (Regulation) Act 1934 s 5(2). At the date at which this volume states the law no fee in respect of a factory had been prescribed. As to the whales to which the Whaling Industry (Regulation) Act 1934 applies see para 1075 note 3 ante. As to the application of the fees see note 6 infra.

6 In relation to a factory situate in England or a ship, 'licensing authority' means the Secretary of State: see the Whaling Industry (Regulation) Act 1934 s 17(1) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3(3); and the Fisheries Act 1981 s 36(2)). As to the Secretary of State see para 846 ante.

The Secretary of State may arrange for licences and permits which he is authorised to grant under the Whaling Industry (Regulation) Act 1934 to be issued and revoked on his behalf and in his name by officers of the Department of Environment, Food and Rural Affairs and by such other persons and at such places within or outside the United Kingdom as he may determine, and any licence or permit issued or revoked in pursuance of such arrangements is deemed for the purposes of the Whaling Industry (Regulation) Act 1934 to be a licence or permit granted or revoked by the Secretary of State: see s 14(1) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3(3)). See also note 1 supra.

The expenses incurred for the purposes of the Whaling Industry (Regulation) Act 1934 by the licensing authority or by the Secretary of State or any other person acting under the Secretary of State's authority, including sums required to pay the remuneration and expenses of whale fishery inspectors, are to be defrayed out of money provided by Parliament: s 16 (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3(3)). As to whale fishery inspectors see para 1087 post.

All fees received under the Whaling Industry (Regulation) Act 1934 by the licensing authority or the other persons referred to in s 16 (as amended) must be paid into the Exchequer, as must all fines (see para 1086 post) recovered by virtue of s 16 (as amended): s 16 (as so amended).

7 The obligation to grant the licence under *ibid* s 5 (as amended) is expressed to be subject to the subsequent provisions of the Whaling Industry (Regulation) Act 1934: s 5(1). As to the subsequent provisions which are relevant see in particular the text and notes 13-14 *infra*. As to conditions which must or may be attached to licences see paras 1082-1084 post.

8 For the prescribed form of licence for a ship used in taking whales see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 5(1), Sch 1 Pt I; and for a ship used in treating whales see Sch 1 Pt II. At the date at which this volume states the law, no form of licence for a factory used for treating whales had been prescribed.

9 Whaling Industry (Regulation) Act 1934 s 5(1).

10 *Ie* under *ibid* s 5 (as amended).

11 *Ie* from the day specified in the licence as the day on which it takes effect.

12 Whaling Industry (Regulation) Act 1934 s 5(3) (amended by the Sea Fish Industry Act 1938 s 44). A licence may be granted for less than one year and the fee reduced accordingly: see the Sea Fish Industry Act 1938 s 44.

13 Whaling Industry (Regulation) Act 1934 s 5(3) (as amended: see note 12 *supra*). This provision is expressed to be subject to s 5(2): see note 5 *supra*.

14 As to mandatory conditions in respect of structures see para 1083 post.

15 Whaling Industry (Regulation) Act 1934 s 6(6).

16 *Ibid* s 5(4). As to licensing offences see para 1086 post.

## UPDATE

### **1080-1081 Licences for whaling ships and whale-oil factories, Applications for licences**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1082. Mandatory conditions as to remuneration and records.**

There must be attached to every licence authorising the use of a ship<sup>1</sup> or factory<sup>2</sup> for treating whales<sup>3</sup> a condition that the remuneration of persons employed in treating whales on board the ship or at the factory, so far as it is calculated by reference to the results of their work, must be

calculated by reference to the size, species, oil-yield and value of the whales treated<sup>4</sup>. Similarly there must be attached to every licence authorising the use of a ship for taking whales<sup>5</sup> a condition that the remuneration of the gunners and crew of the ship must, so far as it is calculated by reference to the results of their work, be calculated by reference to the size, species, oil-yield and value of the whales taken, and in such manner as to exclude remuneration in respect of any whale which is of less than such length as may be prescribed<sup>6</sup>, or the taking of which is prohibited<sup>7</sup>.

There must be attached to every licence authorising the use of a ship or factory for treating whales<sup>8</sup> conditions as to the recording of certain particulars<sup>9</sup> in the prescribed manner<sup>10</sup> and by the prescribed person<sup>11</sup>.

There must be attached to every licence the condition that the records required by the licence to be kept must be transmitted, at such times and in such manner as may be prescribed<sup>12</sup>, to the licensing authority<sup>13</sup>. There must also be attached to every licence a condition requiring the master<sup>14</sup> or occupier of the ship or factory to which the licence relates to furnish at such time, in such form and to such authority as may be specified in the licence, an account showing the remuneration of each gunner and member of the crew of the ship, or of each person employed at the factory, as the case may be, and the manner in which that remuneration is calculated<sup>15</sup>.

1 For the meaning of 'ship' see para 1076 note 3 ante.

2 For the meaning of 'factory' see para 1080 note 6 ante.

3 In every such licence granted under the Whaling Industry (Regulation) Act 1934. As to the whales to which the Act applies see para 1075 note 3 ante. As to the necessity for a licence see para 1080 ante. As to the procedure on an application for a licence see para 1081 ante. As to licensing offences see para 1086 post.

4 Ibid s 6(1A) (added by the Sea Fish Industry Act 1938 s 45).

5 See note 3 supra.

6 For the meaning of 'prescribed' see para 1078 note 7 ante.

7 Whaling Industry (Regulation) Act 1934 s 6(1).

8 See note 3 supra.

9 The date and place of taking, and the species and sex of each whale treated in the ship must be specified, together with such measurements and other biological information (including information as to the contents of its internal organs) as may be prescribed: Whaling Industry (Regulation) Act 1934 s 6(2)(a)(i). In the case of ships used for treating whales, regulations prescribe the keeping of records as to the marking of the whale, the time of hauling up for treatment, the length, whether it contained any foetus and the length and sex of any such foetus, whether the whale was producing milk and any explanation of circumstances in which a whale was taken or treated illegally: see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 6(b), (d)-(i). At the date at which this volume states the law, no further particulars had been prescribed in relation to factories.

There must also be recorded the prescribed particulars as to the number of whales treated in the ship or factory, and as to the yield of oil of different grades, and the quantities of meal, guano and other products derived from those whales: Whaling Industry (Regulation) Act 1934 s 6(2)(a)(ii).

In the case of ships used for treating whales, the prescribed particulars are: (1) for each day, the number of whales of each species taken, the number of whales lost and an explanation of the circumstances in which each loss occurred, the number of whales fully treated and the number partially treated, and the yield of oil of each grade produced; and (2) for each week, the quantity produced, if any, of meal, fertiliser (guano) or other products specified separately: Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 7. At the date at which this volume states the law, no particulars had been prescribed in the case of factories.

10 In the case of ships used for treating whales, the prescribed records must be kept on forms provided by the Secretary of State and, where the records are kept under *ibid* reg 6 (see note 9 supra), must be arranged so far as possible in the chronological order of the taking of the whales: reg 6. The particulars must be entered immediately they become available: reg 6. As to the Secretary of State see para 846 ante. At the date at which this volume states the law, no manner of keeping records had been prescribed in the case of factories.



11 Whaling Industry (Regulation) Act 1934 s 6(2)(a). In the case of ships used for treating whales, the prescribed person is the master or person in charge of the ship: see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, regs 6, 7.

12 In the case of ships used for treating whales, the master or person in charge must at the earliest possible opportunity after the conclusion of the whaling operations of each season send the records either directly or through the owners or charterers to the licensing authority: see *ibid* reg 9. As to the licensing authority see para 1081 note 6 ante. At the date at which this volume states the law, no method of transmission of records had been prescribed in the case of factories.

13 Whaling Industry (Regulation) Act 1934 s 6(3).

14 As to the meaning of 'master' see para 1077 note 6 ante.

15 Whaling Industry (Regulation) Act 1934 s 6(3) (amended by the Sea Fish Industry Act 1938 s 45). As to the appropriate conditions for licences for ships used in taking whales and in treating whales see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 5, Sch 2 Pt I (amended by SI 1958/2042; SI 1959/2054; SI 1960/547; SI 1961/2336); and the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, Sch 2 Pt II (amended by SI 1959/2054; SI 1960/547).

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### **1083. Mandatory conditions as to plant.**

There must be attached to every licence authorising the use of a ship<sup>1</sup> or factory<sup>2</sup> for treating whales<sup>3</sup> a condition that the ship or factory must be equipped with plant of a type approved by the licensing authority<sup>4</sup> for the extraction of oil from the blubber, flesh and bones of whales, and a condition that steps must be taken to ensure that the plant is kept in good order and operated efficiently<sup>5</sup>. Every such licence must also have attached to it a condition that, except in the case of a whale or part of a whale intended to be used for human food, the oil must be extracted, by boiling or otherwise, from all whale blubber, from the heads and tongues of whales and from their tails as far forward as the outer opening of the lower intestine<sup>6</sup>. In the case of a factory, every such licence must also have attached to it a condition that adequate arrangements must be made for utilising residual products<sup>7</sup>.

1 For the meaning of 'ship' see para 1076 note 3 ante.

2 For the meaning of 'factory' see para 1080 note 6 ante.

3 In every such licence granted under the Whaling Industry (Regulation) Act 1934. As to the whales to which the Act applies see para 1075 note 3 ante. As to the necessity for a licence see para 1080 ante. As to the procedure on an application for a licence see para 1081 ante. As to licensing offences see para 1086 post.

4 As to the licensing authority see para 1081 note 6 ante.

5 Whaling Industry (Regulation) Act 1934 s 6(2)(b). As to the prohibition on conditions involving the substitution of plant without 12 months' notice see para 1084 note 5 post.

6 *Ibid* s 6(2)(c).

7 *Ibid* s 6(2)(d).

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# **1084. Conditions which may be attached to licences.**

In addition to any other conditions<sup>1</sup>, there may be attached to any licence<sup>2</sup> such conditions, if any, as appear to the licensing authority<sup>3</sup> to be necessary or expedient for the purpose of preventing, so far as practicable, any excessive destruction of whales<sup>4</sup> and any wastage of whales or whale products, the taking of whales in particular areas, and the killing of whales otherwise than by a particular method<sup>5</sup>. Any conditions attached to such a licence for the purpose of preventing the taking of whales in any particular area may prohibit the taking, in that area, of any whales whatever or any particular descriptions of whales either at any time whatever or during particular periods<sup>6</sup>. Conditions attached to such a licence for the purpose of preventing the killing of whales otherwise than by a particular method may prohibit the killing of whales otherwise than by that method either generally or in a particular area<sup>7</sup>.

1       Ie the conditions which must be attached, either in every case or in particular cases: see paras 1082-1083 ante.

2       Ie every such licence granted under the Whaling Industry (Regulation) Act 1934. As to the necessity for a licence see para 1080 ante. As to the procedure on an application for a licence see para 1081 ante. As to licensing offences see para 1086 post.

3       As to the licensing authority see para 1081 note 6 ante.

4       As to the whales to which the Whaling Industry (Regulation) Act 1934 applies see para 1075 note 3 ante.

5       Ibid s 6(4) (substituted by the Sea Fish Industry Act 1938 s 45). Notwithstanding anything in the provisions of the Whaling Industry (Regulation) Act 1934 s 6(1)-(4) (as amended) (see the text and notes 1-4 supra; and paras 1082-1083 ante), no condition involving the substitution of one type of plant for another may be attached to a licence under s 6 (as amended) unless at least 12 months' notice of the intention to impose the condition has been given by the licensing authority in such manner as that authority thinks best for informing persons concerned: s 6(5). Conditions appropriate to ships used in taking whales have been prescribed by regulations and can be incorporated by reference in licences granted for such ships: see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 5, Sch 1 Pt I, Sch 2 Pt I (amended by SI 1958/2042; SI 1959/2054; SI 1960/547; SI 1961/2336). These conditions make provision for prohibited areas, close seasons and a limit on numbers killed in respect of baleen whales, for prohibited areas in respect of humpback whales and blue whales, and for prohibitions on killing minke whales, grey whales and right whales: see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, Sch 2 Pt I para 1. Conditions appropriate for incorporation in licences granted for ships engaged in treating whales prohibit the treating of baleen whales killed in prescribed areas, at prescribed times or in excess of quotas, and the treating of humpback whales killed in specified areas, sperm whales killed in specified periods, grey whales and right whales except when to be used exclusively for local consumption by aborigines, and blue whales killed in the North Atlantic Ocean: see Sch 1 Pt II, Sch 2 Pt II para 1 (amended by SI 1958/2042; SI 1959/2054; SI 1960/547; SI 1961/2336). For the meaning of 'humpback whale' see para 1079 note 8 ante; for the meaning of 'blue whale' see para 1079 note 5 ante; for the meaning of 'grey whale' see para 1078 note 6 ante; and for the meaning of 'right whale' see para 1078 note 5 ante.

6       Whaling Industry (Regulation) Act s 6(4) (as substituted: see note 5 supra).

7       See ibid s 6(4) (as substituted: see note 5 supra).

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### 1085. Permits to take and treat whales for scientific purposes.

The Secretary of State<sup>1</sup> may grant to any person a special permit authorising that person to kill, take and treat whales<sup>2</sup> for purposes of scientific research or for other exceptional purposes, subject to such restrictions as to number and subject to such other conditions as the Secretary of State thinks fit<sup>3</sup>. He may at any time revoke such a permit<sup>4</sup>.

1 As to the Secretary of State see para 846 ante.

2 As to the whales to which the Whaling Industry (Regulation) Act 1934 applies see para 1075 note 3 ante.

3 Ibid s 7(1). This is expressed to have effect notwithstanding anything in the Whaling Industry (Regulation) Act 1934. The killing, taking or treating of whales in accordance with a permit in force under s 7 is exempt from the operation of ss 1-6 (as amended) (see para 1077 et seq ante): s 7(1). As to the delegation by the Secretary of State of his powers under s 7 see s 14(1) (as amended); and para 1081 note 6 ante.

4 Ibid s 7(2).

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### 1086. Licensing offences.

If any condition attached to a licence<sup>1</sup> is contravened or not complied with, then, in the case of a licence granted in respect of a ship<sup>2</sup>, the master<sup>3</sup> and the owner and charterer, if any, or, in the case of a licence granted in respect of a factory<sup>4</sup>, the manager and occupier<sup>5</sup> is each liable to a fine<sup>6</sup>. The court by which the offender is convicted may, if it thinks fit, cancel any licence<sup>7</sup> granted to the offender<sup>8</sup>. Any person who fails to keep any record in accordance with the conditions attached to a licence, or knowingly makes in any record<sup>9</sup> a statement false in any material particular, is liable to a fine<sup>10</sup>. Further, any person who, with intent to deceive, uses, or lends to or allows to be used by any other person, a licence or permit<sup>11</sup>, or makes or has in his possession any document so closely resembling a licence or permit as to be calculated to deceive, is similarly liable<sup>12</sup>.

1 Ie any licence under the Whaling Industry (Regulation) Act 1934. As to the conditions which must or may be attached to such a licence see paras 1082-1084 ante.

2 For the meaning of 'ship' see para 1076 note 3 ante.

3 As to the meaning of 'master' see para 1077 note 6 ante.

4 As to the meaning of 'factory' see para 1080 note 6 ante.

5 As to the defence which may be set up by the owner, charterer or occupier see para 1088 post.

6 Whaling Industry (Regulation) Act 1934 s 6(7) (amended by the Fisheries Act 1981 s 35(4)). The guilty person is liable on summary conviction to a fine not exceeding £5,000, or on conviction on indictment to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 6(7) (as so amended). Where this provision refers to the owner, charterer and occupier it is expressed to be subject to the subsequent provisions of the Act. See in particular para 1088 post.

7 Ie any licence granted under the Whaling Industry (Regulation) Act 1934 which is a licence for the time being in force in respect of the ship or factory: s 6(7) (as amended: see note 6 supra). On cancellation, the licence ceases to be in force: s 6(7) (as so amended).

8 Ibid s 6(7) (as amended: see note 6 supra).

9 le any record which he is required by the conditions of the licence to keep.

10 Whaling Industry (Regulation) Act 1934 s 6(8) (amended by the Fisheries Act 1981 s 35(5)). The guilty person is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 6(8) (as so amended; and further amended by the Criminal Justice Act 1991 s 17(3)(c), Sch 4 Pt III). As to the statutory maximum see para 849 note 15 ante.

11 le a licence or permit under the Whaling Industry (Regulation) Act 1934. As to permits see para 1085 ante.

12 Ibid s 9(1)(a), (b) (s 9(1)(a) amended by the Forgery and Counterfeiting Act 1981 s 30, Sch 1 Pt I). The guilty person is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine of an unspecified amount: Whaling Industry (Regulation) Act 1934 s 9(1) (amended by the Fisheries Act 1981 s 35(5); and the Criminal Justice Act 1991 Sch 4 Pt III).

## UPDATE

### 1086-1090 Licensing offences ... Legislation restricting sealing

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 1086 Licensing offences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## (C) ENFORCEMENT AND LEGAL PROCEEDINGS

### 1087. Whale fishery inspectors.

For the purpose of enforcing the Whaling Industry (Regulation) Act 1934, a whale fishery inspector<sup>1</sup>, on producing on demand evidence of the fact that he is such an inspector, may board or enter any ship<sup>2</sup> or factory<sup>3</sup> which he has reason to believe is used for taking or for treating whales and may inspect it and its plant and equipment<sup>4</sup>. In the case of a ship, he may require the master<sup>5</sup> and crew, or any of them, to produce all such licences<sup>6</sup>, records and other documents as the inspector considers it necessary to inspect, and to answer all such inquiries as he considers it necessary to make; and in the case of a factory, he may impose the same requirements on the occupier or manager and the employees or any of them<sup>7</sup>. In either case he may take copies of or extracts from any documents produced to him<sup>8</sup>.

Any whale fishery inspector specially authorised<sup>9</sup> may go on board any British ship to which the Whaling Industry (Regulation) Act 1934 applies<sup>10</sup> and which is used for treating whales<sup>11</sup>; and,

during the period specified in his authority, he is entitled to remain on board, to be provided with subsistence and accommodation in the ship, and to be present at all operations in connection with the treating of whales on board the ship<sup>12</sup>.

Every person who without reasonable excuse refuses to produce to a whale fishery inspector any document which he is required<sup>13</sup> to produce, or without reasonable excuse refuses to answer, or answers falsely, any inquiry duly made of him by such an inspector, or otherwise wilfully obstructs, or without reasonable excuse refuses facilities to, such an inspector in the discharge of his functions is liable to a fine<sup>14</sup>.

1 'Whale fishery inspector' means: (1) any person appointed by or under the authority of the Secretary of State to be such an inspector; (2) any commissioned officer of any of Her Majesty's ships on full pay: Whaling Industry (Regulation) Act 1934 s 8(4). As to the Secretary of State see para 846 ante.

2 As to the meaning of 'ship' see para 1076 note 3 ante.

3 As to the meaning of 'factory' see para 1080 note 6 ante.

4 Whaling Industry (Regulation) Act 1934 s 8(1)(a).

5 As to the meaning of 'master' see para 1077 note 6 ante.

6 As to licences see para 1080 et seq ante.

7 Whaling Industry (Regulation) Act 1934 s 8(1)(b).

8 Ibid s 8(1)(c).

9 Ie specially authorised in that behalf by the Secretary of State: ibid s 8(2).

10 For the meaning of 'British ship to which the Whaling Industry (Regulation) Act 1934 applies' see para 1078 note 2 ante.

11 As to the whales to which the Whaling Industry (Regulation) Act 1934 applies see para 1075 note 3 ante.

12 Ibid s 8(2). In respect of each day during which he is so provided with subsistence and accommodation he must pay the master the prescribed sum of £1: s 8(2); Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 10 (amended by SI 1958/2042).

At least two inspectors must be maintained on any ship engaged in treating whales, but ships used solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals are exempted from this provision: see the Whaling Industry (Ship) Regulations 1955, SI 1955/1973, reg 5, Sch 1 Pt II, Sch 2 Pt II para 11 (substituted by SI 1959/2054). As to the expenses incurred by the licensing authority in paying the remuneration and expenses of inspectors see para 1081 note 6 ante.

13 Ie required to produce under the Whaling Industry (Regulation) Act 1934 s 8 (as amended).

14 Ibid s 8(3) (amended by the Fisheries Act 1981 s 35(6)). The guilty person is liable on summary conviction to a fine not exceeding £5,000, or on conviction on indictment to a fine of an unspecified amount: see the Whaling Industry (Regulation) Act 1934 s 8(3) (as so amended).

## UPDATE

### 1086-1090 Licensing offences ... Legislation restricting sealing

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1088. Legal proceedings.**

Summary proceedings taken by virtue of the Whaling Industry (Regulation) Act 1934<sup>1</sup> against any person for an offence committed at sea may be commenced at any time within six months from the date on which that person first lands in the United Kingdom<sup>2</sup> after the commission of the offence<sup>3</sup>. Proceedings against any person may be taken before the court having jurisdiction in the place where he is for the time being<sup>4</sup>.

In any proceedings<sup>5</sup> taken against the owner or charterer of a ship<sup>6</sup> or against the occupier of a factory<sup>7</sup> in respect of any act or omission on the part of another person, it is a good defence for the owner, charterer or occupier, as the case may be, to prove that the act or omission took place without his knowledge or connivance and was not facilitated by any negligence on his part<sup>8</sup>.

1 As to the offences see paras 1086-1087 ante. As to summary proceedings generally see MAGISTRATES vol 29(2) (Reissue) para 653 et seq.

2 For the meaning of 'United Kingdom' see para 843 note 1 ante.

3 Whaling Industry (Regulation) Act 1934 s 10(2) (amended by the Fisheries Act 1981 s 35(7)).

4 Whaling Industry (Regulation) Act 1934 s 10(4). In any proceedings, until the contrary is proved, a document purporting to be a licence or permit granted under the Whaling Industry (Regulation) Act 1934 must be presumed to be such a licence or permit, as the case may be: s 10(3). As to licences see para 1080 et seq ante; and as to permits see para 1085 ante.

5 In any proceedings taken by virtue of the Whaling Industry (Regulation) Act 1934: s 10(1).

6 As to the meaning of 'ship' see para 1076 note 3 ante.

7 As to the meaning of 'factory' see para 1080 note 6 ante.

8 Whaling Industry (Regulation) Act 1934 s 10(1).

## **UPDATE**

### **1086-1090 Licensing offences ... Legislation restricting sealing**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **(iii) Seals, Walruses and Sea Otters**

## **A. PROPERTY IN SEALS AND WALRUSES**

### **1089. Property in seals and walruses.**

The property in seals and walruses captured in British waters is decided according to the law as to the capture of animals in a wild state<sup>1</sup>.

<sup>1</sup> See ANIMALS vol 2 (2008) PARAS 710-711, 715-716, 737. Seals and walruses are considered in this title because English law has historically treated them as if they were fish.

### **UPDATE**

#### **1086-1090 Licensing offences ... Legislation restricting sealing**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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## **B. SEALING LEGISLATION**

### **1090. Legislation restricting sealing.**

In Great Britain<sup>1</sup> and its territorial waters<sup>2</sup>, sealing is restricted by the Conservation of Seals Act 1970<sup>3</sup>. In the Antarctic, seals are protected by the Antarctic Act 1994<sup>4</sup>. In the North Pacific, fishing for fur seals and sea otters is regulated by the Behring Sea Award Act 1894<sup>5</sup> and the Seal Fisheries (North Pacific) Acts 1895 and 1912<sup>6</sup>. In certain other areas, close seasons have been prescribed by the Seal Fishery Act 1875<sup>7</sup>.

<sup>1</sup> For the meaning of 'Great Britain' see para 843 note 1 ante.

<sup>2</sup> As to the territorial sea see paras 961, 964 note 3 ante.

<sup>3</sup> As to restrictions on sealing contained in the Conservation of Seals Act 1970 see para 1091 et seq post. Nothing done outside the seaward limits of the territorial waters adjacent to Great Britain constitutes an offence under the Conservation of Seals Act 1970: s 17(2). The Act does not extend to Northern Ireland: s 17(3).

A duty is cast upon the Natural Environment Research Council to provide the Secretary of State with scientific advice on matters related to the management of seal populations: see ss 13, 15. As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

<sup>4</sup> As to the protection of fauna in Antarctica see ANIMALS vol 2 (2008) PARA 991. The United Kingdom has ratified the Convention for the Conservation of Antarctic Seals (London, 1 June 1972; TS 45 (1978); Cmnd 7209).

<sup>5</sup> As to the Behring Sea Award Act 1894 see para 1091 post. As to the circumstances in which the Act ceases to be in force see para 1091 note 2 post.

6 The Seal Fisheries (North Pacific) Acts 1895 and 1912 may be cited together by virtue of the Seal Fisheries (North Pacific) Act 1912 s 6. The Acts were originally enacted on a temporary basis, but were made permanent by the Expiring Laws Act 1931 ss 1, 3, Sch 1. The provisions of the Seal Fisheries (North Pacific) Acts 1895 and 1912 are in addition to and not in derogation of the Behring Sea Award Act 1894: Seal Fisheries (North Pacific) Act 1895 s 7(2). See further para 1092 post.

7 As to the Seal Fishery Act 1875 see para 1093 post.

## **UPDATE**

### **1086-1090 Licensing offences ... Legislation restricting sealing**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/ (iii) Seals, Walruses and Sea Otters/C. REGULATION OF SEALING/(A) Restrictions on Sealing Overseas/1091. Sealing in the Behring Sea and adjacent waters.

## ***C. REGULATION OF SEALING***

### **(A) RESTRICTIONS ON SEALING OVERSEAS**

#### **1091. Sealing in the Behring Sea and adjacent waters.**

Citizens and subjects of Great Britain<sup>1</sup> are forbidden to kill, capture or pursue at any time and in any manner whatever fur seals within 60 miles of the Pribiloff Islands<sup>2</sup>. Between 1 May and 31 July, both inclusive, they are forbidden to kill, capture or pursue in any manner whatever fur seals in the Pacific Ocean, including the Behring Sea, anywhere north of 35 degrees of north latitude and east of 180 degrees of longitude until it strikes the water boundary between the United States and Russia<sup>3</sup>, and following that line up the Behring Straits<sup>4</sup>.

When fur seal fishing is allowed, only sailing vessels, with or without assistance of canoes or undecked boats propelled by paddles, oars or sails, may engage in the fishing<sup>5</sup>. Sailing vessels must have a special licence for the purpose, and must fly a distinguishing flag<sup>6</sup>. Nets, firearms and explosives may not be used, but shotguns may be used outside the Behring sea during the season<sup>7</sup>. Men engaged in fur seal fishing must be proved fit to handle with sufficient skill the weapons with which the fishing is carried on<sup>8</sup>, and the master of the sailing vessel must enter in the official log the date and place of each sealing operation and the number and sex of the seals captured each day<sup>9</sup>.

A person who commits, procures, aids or abets any contravention of these provisions<sup>10</sup> and certain licensing offences<sup>11</sup> is guilty of an offence<sup>12</sup>. Contravention also renders the ship employed in the contravention and her equipment and everything on board her liable to forfeiture, but the court may release the ship and her contents on payment of a fine<sup>13</sup>.

1 As to British citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 8 et seq. For the meaning of 'Great Britain' see para 843 note 1 ante.



2 Behring Sea Award Act 1894 s 1(1), Sch 1 art 1. This Act remains in force so long as the scheduled provisions remain in force and no longer: s 8. The scheduled provisions are subject to review every five years (see Sch 1 art 9), with power for Her Majesty to modify the Act by Order in Council: see s 8 proviso. At the date at which this volume states the law this power had not been exercised.

3 le the water boundary described in the Treaty between the United States and Russia ceding Alaska (Washington, 30 March 1867; 57 BFSP 452) art 1: Behring Sea Award Act 1894 Sch 1 art 2. The Act arose out of the Treaty with the United States of America relating to Behring's Sea (Washington, 29 February 1892; TS 8 (1893); C 6639).

4 Behring Sea Award Act 1894 Sch 1 art 2.

5 Ibid Sch 1 art 3.

6 Ibid Sch 1 art 4. For the description of flag and form of licence see the Behring Sea Award Order in Council 1895, SI 1895/61.

7 Behring Sea Award Act 1894 Sch 1 art 6. However, Sch 1 arts 1-7 do not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain fishing elsewhere than in the Behring Sea or the waters of the Aleutian Passes in canoes or undecked boats not used with other vessels provided the Indians are not employed by other persons, and not hunting outside territorial waters under contract to deliver the skins to any person: Sch 1 art 8.

8 Ibid Sch 1 art 7.

9 Ibid Sch 1 art 5.

10 See the text and notes 1-9 supra.

11 Every person who forges or fraudulently alters any licence or other document issued for the purpose of the Behring Sea Award Act 1894 Sch 1 arts 4, 7 (see the text and notes 6, 8 supra), or who procures any such licence or document to be forged or fraudulently altered, or who knowing any such licence or document to be forged or so altered uses the same, or who aids in forging or fraudulently altering any such licence or document, commits an offence: see s 1(4).

12 See ibid s 1(2), Sch 2. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale: Sch 2 (applying provisions of the Merchant Shipping Act 1854 s 518 (repealed)); Criminal Justice Act 1948 s 1(2). If the offence is not tried summarily, then there is no maximum penalty or term: see the Behring Sea Award Act 1894 Sch 2. Subject to a statutory defence, the master of a vessel employed in the fishery is personally liable for acts done by persons on board the vessel: see s 4. Orders in Council may be made for carrying into effect the Act, and contravention of regulations contained therein is punishable by a penalty not exceeding level 3 on the standard scale: s 3 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The Orders in Council so made are the Behring Sea Award Order in Council 1894, SI 1894/120; and the Behring Sea Award Order in Council 1895, SI 1895/61. As to the standard scale see para 841 note 4 ante.

13 Behring Sea Award Act 1894 ss 1(2), 4. The fine must not exceed level 5 on the standard scale: see s 1(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

## UPDATE

### 1091 Sealing in the Behring Sea and adjacent waters

TEXT AND NOTES--Behring Sea Award Act 1894 repealed: Marine and Coastal Access Act 2009 s 234(e), Sch 22 Pt 5.

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## 1092. Restrictions on capturing seals and sea otters in the Pacific Ocean.

The capture of fur seals and the killing, taking and hunting of sea otters is prohibited to British ships within the seas of the Pacific Ocean north of the parallel of 30 degrees north latitude, including the seas of Behring, Kamchatka, Okhotsk and Japan<sup>1</sup>. If any person contravenes this prohibition or uses any port in the United Kingdom for the purpose of equipping any ship intended to be used to hunt seals or sea otters in those seas, he is guilty of an offence and the ship is subject to forfeiture<sup>2</sup>. Importation of skins of seals and sea otters taken in contravention of any prohibition<sup>3</sup> and, unless officially marked and certified, skins of seals of certain species<sup>4</sup> belonging to the American, Russian or Japanese herds is prohibited<sup>5</sup>.

1 Seal Fisheries (North Pacific) Act 1895 ss 1, 2, 7(1), (2) (s 7(2) amended by the Seal Fisheries (North Pacific) Act 1912 ss 1, 2); Seal Fisheries (North Pacific) Order in Council 1913, SI 1913/485, arts 1, 5. The restriction does not apply to aborigines dwelling on the coast and carrying on pelagic sealing by canoe not used with other vessels and not engaged by any person or under contract to deliver the skins: art 4.

2 Seal Fisheries (North Pacific) Act 1895 s 1(3); Seal Fisheries (North Pacific) Act 1912 s 3(1). For the meaning of 'United Kingdom' see para 843 note 1 ante. A person guilty of such an offence is liable: (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both; or (2) on conviction on indictment, to a fine or to imprisonment for a period not exceeding two years or to both: Seal Fisheries (North Pacific) Act 1895 s 1(3); Seal Fisheries (North Pacific) Act 1912 s 3(1) (both amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 paras 11, 12). As to the statutory maximum see para 849 note 15 ante. Contravention of any regulations made by Order in Council under the Seal Fisheries (North Pacific) Act 1895 s 2(1) (see note 1 supra) is punishable with a fine not exceeding level 3 on the standard scale: s 2(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante. At the date at which this volume states the law no regulations had been made.

3 Ie an Order in Council under the Seal Fisheries (North Pacific) Act 1895: see note 1 supra.

4 Ie *Callorhinus alascanus*, *Callorhinus ursinus* and *Callorhinus kurilensis*.

5 See the Seal Fisheries (North Pacific) Act 1912 ss 2-4; and the Seal Fisheries (North Pacific) Order in Council 1913, SI 1913/485, arts 1, 5. As to forfeiture and the penalty for improper importation see the Customs and Excise Management Act 1979 ss 49, 50 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) paras 993-994.

The provisions of the Seal Fisheries (North Pacific) Act 1912 ss 3, 4 may be extended by Order in Council, with modifications, to British dominions: s 5 (amended by the Cyprus Act 1960 s 3(2), Schedule para 12; and the Statute Law (Repeals) Act 1993). As to Her Majesty's dominions see COMMONWEALTH vol 13 (2009) PARA 707. The following instruments have been made under this power (although to some extent they relate to legislative fields over which the United Kingdom Parliament no longer exercises jurisdiction and they thus depend for their continuing validity on local legislation): the Seal Fisheries (Commonwealth of Australia) Order in Council 1913, SI 1913/486; the Seal Fisheries (Crown Colonies and Protectorates) Order in Council 1913, SI 1913/488 (amended by SI 1914/774; SI 1956/838); the Seal Fisheries (Newfoundland) Order in Council 1913, SI 1913/487 (Newfoundland is now a province of Canada: see COMMONWEALTH vol 13 (2009) PARA 745); the Seal Fisheries (New Zealand) Order in Council 1913, SI 1913/695; the Seal Fisheries (Papua) Order in Council 1913, SI 1913/890; and the Seal Fisheries (Norfolk Islands) Order in Council 1915, SI 1915/349.

### UPDATE

## 1092 Restrictions on capturing seals and sea otters in the Pacific Ocean

TEXT AND NOTES--Seal Fisheries (North Pacific) Act 1895 and Seal Fisheries (North Pacific) Act 1912 repealed: Marine and Coastal Access Act 2009 s 234(f), (g), Sch 22 Pt 5.

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### **1093. Close time for seals in Greenland waters.**

From 1 January to 2 April in each year a British citizen is not allowed to kill or capture any seal<sup>1</sup> in so much of the seas adjacent to the coast of Greenland as lies between the parallels of 67 degrees and 75 degrees of north latitude and between the meridian of 5 degrees east and 17 degrees west longitude<sup>2</sup>.

1 'Seal' means the harp or saddleback seal, the bladder-nosed or hooded seal, the ground or bearded seal, and the floe seal or floe rat, and includes any animal of the seal kind which may be specified by Order in Council under the Seal Fishery Act 1875: s 6. At the date at which this volume states the law no such order had been made.

2 Ibid ss 1, 2, Schedule; Order in Council dated 28 November 1876 (SI Rev 1948, VII, p 907). The penalty for a breach of the provisions of the Seal Fishery Act 1875 is a fine on summary conviction not exceeding level 3 on the standard scale: see ss 2, 3 (both amended by the Statute Law (Repeals) Act 1993). Masters and owners are liable to like penalties if the offences are committed by their fault or with their connivance, and in such cases the court may direct the penalties to be recovered by distress or arrestment and sale of the ship and her tackle: see the Seal Fishery Act 1875 ss 4, 5. As to British citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 8 et seq.

### **UPDATE**

### **1093 Close time for seals in Greenland waters**

TEXT AND NOTES--Seal Fishery Act 1875 repealed: Marine and Coastal Access Act 2009 s 234(b), Sch 22 Pt 5.

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### **(B) RESTRICTIONS ON SEALING IN GREAT BRITAIN**

### **1094. Protection of grey seals and common seals.**

There is an annual close season for grey seals<sup>1</sup> extending from 1 September to 31 December, both inclusive, and an annual close season for common seals<sup>2</sup> extending from 1 June to 31 August, both inclusive<sup>3</sup>. Where, after consultation with the Natural Environment Research Council<sup>4</sup>, it appears to the Secretary of State<sup>5</sup> necessary for the proper conservation of seals, he may by order<sup>6</sup> prohibit, with respect to any specified area, the killing, injuring or taking of both or either species of seal<sup>7</sup>.

Any person who wilfully kills, injures or takes a seal in contravention of the close season or of such an order commits an offence<sup>8</sup>. An offence is also committed if any person uses any poisonous substance for the purpose of killing or taking any seal<sup>9</sup>, or uses any firearm<sup>10</sup>, other

than a rifle of the prescribed specification<sup>11</sup>, for the purpose of killing, injuring or taking any seal<sup>12</sup>.

1 le seals of the species known as *Halichoerus grypus*: Conservation of Seals Act 1970 s 2(1).

2 le seals of the species known as *Phoca vitulina*: ibid s 2(1).

3 Ibid s 2(1).

4 As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

5 As to the Secretary of State see para 846 ante.

6 The Secretary of State's power to make orders under the Conservation of Seals Act 1970 is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 14(1). Any such order may be varied or revoked by subsequent order: s 14(2). See note 7 infra.

7 Ibid ss 3(1), 15. See the Conservation of Seals (England) Order 1999, SI 1999/3052.

8 See the Conservation of Seals Act 1970 ss 2(2), 3(2). As to penalties and proceedings see para 1098 post. As to exceptions and licences see paras 1095-1096 post.

9 Ibid s 1(1)(a). This provision is not restricted to seals of any particular species. Possession of any poisonous substance for the purpose of committing an offence under the Conservation of Seals Act 1970 is also an offence: see s 8(2).

10 'Firearm' has the same meaning as in the Firearms Act 1968 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 630): Conservation of Seals Act 1970 s 15.

11 le other than a rifle using ammunition having a muzzle energy of not less than 600 footpounds and a bullet weighing not less than 45 grains: ibid s 1(1)(b). 'Ammunition' has the same meaning as in the Firearms Act 1968 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 634): Conservation of Seals Act 1970 s 15.

12 Ibid s 1(1)(b). Possession of any firearm or ammunition, the use of which is prohibited by s 1(1)(b) for the purpose of committing an offence under the Act, is also an offence: see s 8(2). The Secretary of State may by order amend s 1(1)(b) by adding any firearm or ammunition to, or by altering the description of, or by substituting any other firearm or ammunition for, the firearm or ammunition mentioned in s 1(1)(b): s 1(2). At the date at which this volume states the law no such order had been made. As to the territorial extent of the Conservation of Seals Act 1970 see para 1090 note 3 ante. As to penalties and proceedings see para 1098 post. As to exceptions and licences see paras 1095-1096 post.

## UPDATE

### 1094-1098 Protection of grey seals and common seals ... Offences, penalties and proceedings

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 1094 Protection of grey seals and common seals

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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### **1095. General exceptions.**

No offence under the provisions for close seasons<sup>1</sup> or under an order protecting seals<sup>2</sup> is committed by any person where the contravention consists only of the taking or attempted taking of any seal which has been disabled otherwise than by his act and was taken or to be taken solely for the purpose of tending it and releasing it when no longer disabled<sup>3</sup>. Nor is such an offence committed by reason only of the unavoidable killing or injuring of any seal as an incidental result of a lawful action<sup>4</sup>. A person is not guilty of such an offence by reason only of the killing or attempted killing of any seal to prevent it from causing damage to a fishing net or fishing tackle in his possession or in the possession of a person at whose request he killed or attempted to kill the seal, or to any fish for the time being in such fishing net<sup>5</sup>.

No offence is committed by any person under the close season provisions<sup>6</sup>, under a protection order<sup>7</sup> or under the provisions restricting killing methods<sup>8</sup> by reason only of the killing of any seal which had been so seriously disabled otherwise than by his act that there was no reasonable chance of its recovering<sup>9</sup>.

1       Ie the provisions of the Conservation of Seals Act 1970 s 2: see para 1094 ante.

2       Ie an order under *ibid* s 3: see para 1094 ante.

3       *Ibid* s 9(1)(a).

4       *Ibid* s 9(1)(b).

5       *Ibid* s 9(1)(c). This exception is subject to the proviso that, at the time, the seal was in the vicinity of such net or tackle: s 9(1)(c).

6       See note 1 *supra*.

7       See note 2 *supra*.

8       Ie under the Conservation of Seals Act 1970 s 1: see para 1094 ante.

9       *Ibid* s 9(2).

### **UPDATE**

#### **1094-1098 Protection of grey seals and common seals ... Offences, penalties and proceedings**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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### **1096. Licences.**

The Secretary of State may grant a licence<sup>1</sup> to any person authorising him, subject to any conditions specified in the licence, to kill or take any specified<sup>2</sup> number of seals within a specified area and by any specified means other than strychnine, for scientific or educational purposes<sup>3</sup>. There is a similar power to grant a licence to kill or take seals<sup>4</sup> for the prevention of damage to fisheries<sup>5</sup>, the reduction of a population surplus of seals for management purposes<sup>6</sup>, the use of a population surplus of seals as a resource<sup>7</sup> or for the protection of flora or fauna<sup>8</sup>. There is also a power to grant a licence to take any specified number of seals within a specified area by any specified means for the purpose of any zoological gardens or collection specified in the licence<sup>9</sup>. Except where a licence is granted for the prevention of damage to fisheries, no licence may be granted without the consent of the appropriate nature conservation body<sup>10</sup> in any area which is a nature reserve, a site of special scientific interest or a marine nature reserve<sup>11</sup>.

The authority conferred by a licence<sup>12</sup> has effect notwithstanding the statutory provisions<sup>13</sup> protecting seals<sup>14</sup>. Any such licence may be revoked at any time by the Secretary of State<sup>15</sup>.

Any person who contravenes or fails to comply with any condition imposed on the grant of a licence is guilty of an offence<sup>16</sup>.

1 Before granting a licence the Secretary of State must consult the Natural Environment Research Council: Conservation of Seals Act 1970 ss 10(3)(a), 15. As to the Secretary of State see para 846 ante. As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

2 Ie specified in the licence: *ibid* s 10(1)(a).

3 *Ibid* s 10(1)(a).

4 Ie any specified number of seals within any specified area by any specified means other than strychnine: *ibid* s 10(1)(c).

5 *Ibid* s 10(1)(c)(i).

6 *Ibid* s 10(1)(c)(ii).

7 *Ibid* s 10(1)(c)(iii).

8 *Ibid* s 10(1)(c)(iv) (added by the Wildlife and Countryside Act 1981 s 12, Sch 7 para 7(1)). This provision applies to areas to which the Conservation of Seals Act 1970 s 10(4) (as added and amended) applies: s 10(1)(c)(iv) (as so added). Section 10(4) (as added and amended) applies to any area which: (1) is a nature reserve within the meaning of the National Parks and Access to the Countryside Act 1949 s 15 (as substituted) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 663); (2) is a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674); or (3) has been designated as a marine nature reserve under the Wildlife and Countryside Act 1981 s 36 (as amended) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 666): Conservation of Seals Act 1970 s 10(4) (added by the Wildlife and Countryside Act 1981 Sch 7 para 7(3); and amended by the Countryside and Rights of Way Act 2000 ss 76(1), 102, Sch 10 para 4, Sch 16 Pt III; and the Nature Conservation (Scotland) Act 2004 s 57, Sch 7 para 3(b)).

9 See the Conservation of Seals Act 1970 s 10(1)(b).

10 'The appropriate nature conservation body' means Natural England, Scottish Natural Heritage or the Countryside Council for Wales, according as the area in question is in or is in waters adjacent to England, Scotland or Wales: *ibid* s 10(5) (added by the Environmental Protection Act 1990 s 132, Sch 9 para 5; and amended by the Natural Heritage (Scotland) Act 1991 s 4, Sch 2 para 4; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 57).

11 Conservation of Seals Act 1970 s 10(3)(b) (amended by the Wildlife and Countryside Act 1981 Sch 7 para 7(2), (3); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 57). The areas mentioned in the text are those to which the Conservation of Seals Act 1970 s 10(4) (as added and amended) applies: see note 8 *supra*.

12 le a licence granted under *ibid* s 10 (as amended).

13 le notwithstanding anything in *ibid* ss 1-9 (as amended): see paras 1094-1095 *ante*, 1098 *post*.

14 *Ibid* s 10(1).

15 *Ibid* s 10(2).

16 *Ibid* s 10(2). Liability under this provision is additional to any other liability to a penalty under the Conservation of Seals Act 1970 or any other Act: s 10(2). As to attempts, penalties, forfeitures and proceedings generally see para 1098 *post*. As to powers of search and entry see para 1097 *post*.

## UPDATE

### **1094-1098 Protection of grey seals and common seals ... Offences, penalties and proceedings**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **1096 Licences**

TEXT AND NOTES--The Secretary of State's functions of granting and revoking licences under the Conservation of Seals Act 1970 s 10 are transferred to the Marine Management Organisation: see Marine and Coastal Access Act 2009 s 9 and WATER AND WATERWAYS vol 100 (2009) PARA 30A.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--Conservation of Seals Act 1970 s 10(4) further amended: Marine and Coastal Access Act 2009 Sch 11 para 1 (partly in force).

1970 Act s 10(4A), (6) added: SI 2007/1843.

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### **1097. Authority to enter land.**

After consultation with the Natural Environment Research Council the Secretary of State<sup>1</sup> may authorise in writing any person to enter upon any land<sup>2</sup> for the purpose of: (1) obtaining information relating to seals for the purpose of any of his statutory functions<sup>3</sup>; or (2) killing or taking seals for the purpose of preventing damage to fisheries by seals<sup>4</sup>. Any such authorisation must specify the land to be entered upon<sup>5</sup>, the period during which the power of entry upon the land may be exercised<sup>6</sup>, the purpose of the entry<sup>7</sup> and (where that purpose is to prevent

damage to fisheries<sup>8</sup>) the number, species and age of seals that may be killed or taken<sup>9</sup>. Any such authorisation may impose other conditions on the exercise by the person authorised of the power of entry or the manner of giving effect to the authorisation<sup>10</sup>.

In general<sup>11</sup>, the Secretary of State must give not less than 48 hours' notice to the occupier of any land of his intention to issue an authorisation and of the purpose of the authorisation<sup>12</sup>. In the case of an authorisation to enter upon land for the purpose of killing or taking seals, the Secretary of State must give not less than 28 days' notice<sup>13</sup>, and he must have regard to any representations that might be made by the occupier<sup>14</sup>. In the latter case he must not issue the authorisation if before the expiration of the notice the occupier satisfies him that the occupier has killed or taken the number of seals which the Secretary of State proposes to specify in the authorisation<sup>15</sup>.

Any person who wilfully obstructs any person authorised by the Secretary of State exercising any such power of entry is guilty of an offence<sup>16</sup>.

1 As to the Secretary of State see para 846 ante. As to the Natural Environment Research Council see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 970.

2 In the Conservation of Seals Act 1970 s 11 any reference to 'land' includes land covered by water: s 11(8).

3 Ie any of the functions of the Secretary of State under the Conservation of Seals Act 1970: s 11(1)(a).

4 Ibid s 11(1)(b). Any seals killed or taken by a person authorised under s 11 to enter upon land belong to the Secretary of State and may be disposed of as he thinks fit: s 11(5). Any person so authorised must produce his authority if required by the owner of the land: s 11(6). He may also take with him upon that land such other persons as may be necessary: s 11(6).

5 Ibid s 11(2)(a).

6 Ibid s 11(2)(b). The period must not exceed eight weeks: s 11(2)(b).

7 Ibid s 11(2)(c).

8 Ie where the purpose of the entry is to prevent damage to fisheries by seals: ibid s 11(2)(d).

9 Ibid s 11(2)(d).

10 Ibid s 11(3).

11 As to the exception see the text and note 13 infra.

12 Conservation of Seals Act 1970 s 11(4). Any notice required by the Conservation of Seals Act 1970 to be given to any person is duly given if it is delivered to him or left at his proper address or sent to him by post: s 12(1). In the case of an incorporated company or body, notice is duly given if given to its secretary or clerk: s 12(2). A person's proper address is his last-known address and an incorporated company's or body's proper address is its registered or principal office: see s 12(3). Where it is not practicable after reasonable inquiry to ascertain the name or address of a person having any interest in land to whom such notice is to be given, the notice may be given by addressing it to him by the description of the person having that interest in the land (naming it) and delivering the notice to some responsible person on the land or by affixing it, or a copy, to some conspicuous object on the land: s 12(4).

13 See ibid s 11(4).

14 Ibid s 11(4).

15 Ibid s 11(4).

16 Ibid s 11(7). Any person guilty of an offence under s 11(7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 5(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante. As to attempts and proceedings and as to forfeitures see para 1098 post.



## UPDATE

### **1094-1098 Protection of grey seals and common seals ... Offences, penalties and proceedings**

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURE AND FISHERIES (VOLUME 1(2) (2007 REISSUE))/2. FISHERIES/(7) WHALING AND SEALING/ (iii) Seals, Walruses and Sea Otters/C. REGULATION OF SEALING/(B) Restrictions on Sealing in Great Britain/1098. Offences, penalties and proceedings.

#### **1098. Offences, penalties and proceedings.**

All offences under the statutory provisions as to the conservation of seals<sup>1</sup> are punishable on summary conviction with a fine<sup>2</sup>. Any person who attempts to commit an offence is guilty of an offence<sup>3</sup>.

Where any offence is committed at some place on the sea coast or at sea outside the area of any commission of the peace, the place of the commission of the offence is deemed for the purposes of the jurisdiction of any court to be any place where the offender is found or to which he is first brought after the commission of the offence<sup>4</sup>.

The court by which a person is convicted of an offence may order the forfeiture of any seal or seal skin in respect of which the offence was committed or of any seal, seal skin, firearm, ammunition or poisonous substance in his possession at the time of the offence<sup>5</sup>.

A constable<sup>6</sup> may stop any person he suspects with reasonable cause of committing an offence<sup>7</sup>. He may without warrant search any vehicle or boat which that person may be using at that time<sup>8</sup>, and he may seize any seal, seal skin, firearm, ammunition or poisonous substance which is liable to be forfeited<sup>9</sup>.

1       Ie under the Conservation of Seals Act 1970. As to the territorial scope of these offences see para 1090 ante.

2       Ibid s 5(2). Apart from an offence under s 11(7) (see para 1097 ante), the fine must not exceed level 4 on the standard scale: s 5(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 841 note 4 ante.

3       Conservation of Seals Act 1970 s 8(1).

4       Ibid s 7.

5       Ibid s 6. For the meanings of 'ammunition' and 'firearm' see para 1094 notes 10, 11 ante.

6       As to constables see POLICE vol 36(1) (2007 Reissue) para 101 et seq.

7       Conservation of Seals Act 1970 s 4(1).

8       Ibid s 4(1)(b).

9 Ibid s 4(1)(c). As to forfeitures see the text and note 5 supra. A constable may sell or otherwise dispose of any seal seized under s 4 (as amended), and the net proceeds of any seal are liable to forfeiture in the same manner as the seal sold: s 4(2). However, no constable is subject to any liability on account of his neglect or failure in the exercise of the powers conferred on him by s 4(2): s 4(2) proviso.

## **UPDATE**

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